Intention and Implementation: Piecing Together Provisions for Māori in the Resource Management Act 1991

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Abstract

Today, it is widely recognised that indigenous people have a valuable contribution to make to the development and practice of resource management. New Zealand legislation recognises in part the importance of Māori participation; however, there appears to be a considerable gap between the recognition of these rights and their effective and widespread implementation at ground level. This study explores the intentions behind, and the implementation of Section 33 transfers of power and Sections 36B-E joint management agreements, under the Resource Management Act, which support Māori participation in resource management decision-making. These provide for the devolution of power from local authorities to iwi authorities and the establishment of agreements to co-manage resources with iwi. A nationwide survey of local authorities' use of the provisions demonstrated that they had been virtually unused. The majority of local authorities do not have any form of co-management agreements with Māori, and those that do have quite constrained arrangements which are designed to enhance consultation, rather than shared decision-making. The results of the survey are contrasted to findings from a series of semi-structured interviews with key informants involved in the crafting of the RMA, which examines the intentions behind the inclusion of these mechanisms in the legislation. The concept of institutional bricolage is used to help explain their creation and implementation, and the subsequent negotiation of the mechanisms and their alternatives by councils. The survey and interview results revealed that an intentional institutional bricolage approach was frequently employed by councils and iwi to negotiate co-management arrangements, but was not used in the crafting of the RMA co-management provisions. Instead, the provisions were a result of unintentional institutional bricolage, drawing on a range of structural and social influences.

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Ehara taku toa i te toa takitahi
Engari, he toa takitini
Success is not the work of one, but the work of many.

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Chapter 1

Introduction

1.1 Introduction

Since the arrival of Europeans to Aotearoa, Māori have struggled to be able to maintain their traditional resource management practices. Access, ownership, property rights, conservation policies and legislation that favours council-based resource management are all contributing factors that have limited the ability of Māori to determine the management of the environment and resources which contribute to their cultural identity. To be directly involved in the management of traditional land and water-based resources is of considerable importance to iwi and hapū, as it is one of the central pillars of Māori aspirations for self-determination (Durie, 1998). Since 1991, New Zealand's resource management legislation has given some recognition of the importance of Māori participation, but there is however, a considerable gap between the recognition of these rights and their effective and widespread implementation at ground level. This thesis sets out to explore the intentions behind the legal mechanisms in the Resource Management Act 1991 (RMA) which provide for the co-management of resources with Māori, and the manner in which they have been implemented by local government.

1.2 Research Background

To date, despite the increasing awareness of the rights of indigenous people and what they can offer resource management practices, there still remain many barriers to the effective and successful integration of indigenous peoples into the management of natural resources. The willingness of the state to recognise indigenous rights and provide viable legislation and

procedures to ensure the effective participation of indigenous groups is often lacking, and indigenous communities frequently have insufficient resources to participate in the manner required by government policy.As Lane states, "the capacity of indigenous people to participate in planning processes is therefore a crucial factor in determining the extent to which planning outcomes reflect, at least in part, indigenous priorities" (Lane, 2006, p. 386). Evidence suggests that the experience of indigenous people participating in resource management is fraught with challenges, particularly the "propensity for decision-makers to overlook, ignore or misinterpret indigenous perspectives" (Lane, 2006, p. 386). Despite these issues, the conviction that indigenous people should be more closely engaged with the management of resources is not only held by indigenous communities themselves, but also by growing numbers of supporters. Many governments are now advocating co-management agreements as a way forward for the state to involve indigenous peoples in planning for and managing traditionally important resources.

Involvement in environmental and resource management is a significant component of Māori aspirations for greater control over their own resources and development as a people. This goal is described by a number of different terms including sovereignty, self-determination, autonomy, independence and tino rangatiratanga. However, as Durie states, "they all capture an underlying commitment to the advancement of Māori people as Māori, and the protection of the environment for future generations" (Durie, 1998, p. 218). The ability to manage traditionally important resources, such as mahinga kai, would acknowledge the long history of Māori interactions with the environment and enables the expression of kaitiakitanga, the ethic of intergenerational environmental and social stewardship (Kawharu, 1998). Secondly, it celebrates cultural heritage and has the power to draw communities together in common activities which bind and reinforce Māori identity. The relationship between Māori and the environment is a rich source of identity, with the health of the environment directly contributing to Māori wellbeing (Panelli and Tipa, 2007). Thirdly, it sends a message to wider society that indigenous peoples play a valuable, and indeed, vital role in caring for, and wise, judicious use of, the environment and the resources it provides. Finally, it demonstrates the willingness of the Crown to fulfil their obligations to Māori under Te Tiriti o Waitangi/Treaty of Waitangi, particularly those relating to Article 2 of the Treaty which confirms and guarantees Māori tino rangatiratanga over their lands, their villages and their taonga. New Zealand legislation now often refers to the 'principles of the Treaty,' providing a strong mandate for Māori participation in all government processes (Jollands and Harmsworth, 2007; PCE, 1998, p. 719).

Co-management offers its own set of challenges, but is increasingly seen as a way of

melding Western science with the benefits of indigenous knowledge gathered over generations of close interactions with the resource in question (Berkes, 2009; Berkes *et al.*, 1991; Borrini *et al.*, 2007; Carlsson and Berkes, 2005). New Zealand law does provide for some devolvement of powers or co-management of lands, water and fisheries to iwi and hapū in certain circumstances. This includes mechanisms such as transfers of power, joint management agreements under the RMA, and mātaitai and taiāpure under fisheries legislation. Both anecdotal evidence and formal research suggest that these former provisions, however, are rarely, if at all, utilised (Coates, 2009; Hayward, 2002; Rennie *et al.*, 2000), and that indigenous participation in resource management planning remains limited, under-resourced and uncoordinated (Jollands and Harmsworth, 2007, p. 762).

The RMA has created many potential opportunities for the participation of Māori in resource management, but as Berke *et al.* (2002) state , there are many legislative, administrative and other barriers to overcome before Māori are located within the dominant power structures with a genuine voice in decision-making processes.

> For change to occur, the goal of achieving human and environmental rights at the local level hinges on local planning that embraces democratic decision making, where resource users equally share power and authority and do so in a flexible system that encourages participation of indigenous people.
>
> (Berke *et al.*, 2002, p.119)

The development of legal mechanisms for co-management indicates that the government is supportive of Māori sharing decision-making processes in resource management with local government. However, from the current evidence, it seems apparent that this is not happening as often as might be appropriate, suggesting that there are still a number of barriers to overcome before the Government's intentions are met.

The issue of consultation with Māori has been exhaustively explored and documented (Joseph, 2002; Vince, 2006) and Hayward (2002) suggests that future research should focus on other areas of Māori participation, particularly in the areas of decision-making and more active roles in resource management. This thesis contributes to this gap in the literature, by examining the extent of Māori involvement in decision-making through the use of co-management mechanisms.

1.3 Research Objectives

Given the potential of indigenous involvement in resource-management and the existence of legal mechanisms which enable co-management or devolution of powers to iwi, it appears that New Zealand authorities have been slow to recognise and facilitate Māori participation at the decision-making levels in resource management practice. To explore this issue, two provisions for Māori in the RMA were chosen for study, both of which provide for co-management or devolution of power to iwi/hapū. These legal mechanisms are the transfers of power (RMA Section 33) and joint management agreements (Resource Management Amendment Act 2005 (RMAA) Sections 36B-E). These provisions are administered by local authorities.[1] To date there has been little research in this area, with only one known study which looked only at transfers of power under Seaction 33 of the RMA (Rennie *et al.*, 2000) and one study which discussed the reasons why there had only been a sole joint management agreement under the RMA to date (Coates, 2009).

The research questions that this study covers are as follows:

Question One:

What were the intentions behind the inclusion of the RMA's Section 33 transfers of power and Sections 36B-E joint management agreements?

Question Two:

To what extent have these provisions been implemented?

Question Three:

What barriers are limiting the uptake of the provisions?

Question Four:

How have the provisions been used in practice?

Question Five:

How does the concept of institutional bricolage explain the creation of the provisions and how their uses have subsequently been negotiated by iwi and councils?

These questions are addressed through a series of interviews with key informants involved in designing the RMA and its implementation. The interviews are supported by a nation-wide

[1]The use of the term 'local authorities' is used interchangeably with 'councils,' both of which are used to represent all forms of local government including regional councils, district councils, city councils and unitary authorities.

survey of local government to ascertain the uptake of the provisions and give insight into the way they have been applied in practice.

1.4 Thesis Structure

The structure of the thesis follows the following outline:

Chapter Two provides an oversight of the historic context recounting the impact of the Treaty of Waitangi on Māori, before documenting the dramatic changes to the political and environmental landscape which led to the creation of the Resource Management Act in 1991.

The Resource Management Act is looked at more closely in Chapter Three, with a focus on the way in which it engages with Māori. Internal and external responses to the RMA are then examined to understand how well the RMA provisions for Māori are being received once they have been implemented at a local government level.

Chapter Four investigates the relationship that Māori have with the environment and resource management. Co-management is often suggested as a way for the state to involve indigenous people in the management of their traditionally important resources. The definition of co-management is explored, alongside some of the problems that are often encountered in trying to establish an effective co-management relationship. It is here that the focus returns to Aotearoa, and the experiences that Māori have had in engaging in co-management arrangements.

Planning and institutional theory are discussed in Chapter Five, which lead into exploring the concept of institutional bricolage and the insights it offers in the understanding of resource management tool design and implementation. This sets up the framework for the discussion of the interviews and survey results later in the thesis.

Chapter Six describes the research methods used in this research and explains the rationale behind their choice, with an emphasis on the incorporation of the principles of a kaupapa Māori approach. Primary sources include interviews with key informants who were involved with the drafting of the RMA and some who are active participants in its implementation, as well as a survey of all local authorities in Aotearoa, asking about their use of transfers of power and joint management agreements with iwi.

Chapter Seven presents the findings resulting from the analysis of the council survey. The numbers of transfers of power and joint management agreements in place are quantified, and the alternative co-management arrangements that councils have established with tāngata

whenua are discussed.

With a good overview of the state of progress in the implementation of the provisions for Māori, Chapter Eight discusses the results or the interviews held with key informants about the creation of the RMA and its subsequent implementation. It identifies and investigates the key themes that emerge from the informants' kōrero, and contrasts this with results of the survey.

Chapter Nine discusses the findings from the surveys and interviews using the framework of institutional bricolage to understand the creation and implementation of the two mechanisms for devolved management or co-management of natural resources by Māori under the RMA.

Chapter Ten concludes the thesis with a review of the research questions and summarises the key findings of the research. This is followed by a section on the significance of the research and ends with some recommendations for further research.

1.5 Te Reo Māori Usage

Te reo Māori is the lifeblood of the Māori culture and it is important to acknowledge its vitality and the depth that it lends to the discussion of resource management in Aotearoa. It is with this in mind, that the Māori language is embraced throughout this thesis and is used where it conveys the most appropriate meaning or context. Most readers will be familiar with the reo Māori terms used throughout this thesis. Māori words are not italicised, unless I consider them to be uncommon enough not to be part of regular parlance. The more uncommon te reo terms are defined on their first appearance in the text and a glossary is provided for further reference. In the case of two frequently used nouns, Aotearoa/New Zealand and Tiriti o Waitangi/ Treaty of Waitangi, both te reo Māori and English names are used interchangeably throughout.

1.6 Tirohia he Huarahi Research Programme Summary

This research contributes to a three year bi-cultural research programme based at the University of Otago. This programme, *Tirohia he Huarahi*, operates out of the Centre for the Study of Agriculture, Food and the Environment (CSAFE). The research team focuses on the barriers to, and the benefits that could arise from, the active participation of tāngata whenua in

the management of resources, particularly that of mahinga kai. The basic premise underlying the research programme is that traditional Māori resource management, and its evolution, has much to offer national resource management practices. This thesis will be used to inform later stages of the research programme.

Chapter 2

Historic Context within Aotearoa New Zealand

2.1 Introduction

The two legal mechanisms that were created to enable greater Māori participation in the management of resources emerged as a result of Aotearoa's rapidly changing political and economic landscape. Although there is no doubt that they are a reflection of the contemporary world, their origins truly stem from the signing of the Treaty of Waitangi and the guarantees that were made to Māori within it. To understand the creation of these provisions, it is essential to frame them within the political, economic and environmental climate that gave rise to their development within the Resource Management Act 1991 and the Resource Management Amendment Act 2005, and the aspirations of Māori as they stood at those times. The overview which follows provides a basic outline of these shifts in the political and economic structure and process, providing the context to the development of these mechanisms, which emerged out of the Resource Management Law Reform (RMLR) of the late 1980s and early 1990s.

2.2 The Treaty of Waitangi/Te Tiriti o Waitangi

Before the reforms of the 1980s and early 1990s are discussed, it is important to consider the impact of the Treaty of Waitangi on the development of New Zealand as a nation. The Treaty of Waitangi or Te Tiriti o Waitangi, as it is known by Māori, was the founding document

of Aotearoa New Zealand, and was signed in 1840 by representatives of the Crown and rangatira of iwi and hapū (see Appendix I for full text of the Treaty in both Māori and English). As simple as the document appears upon the initial viewing, consisting of only three articles, the differences in interpretation become apparent once the Māori version is compared with that of the English version. It is from these differences that stem many of the existing tensions between Māori and Pākehā.

The First Article, in its English version, states that the chiefs ceded 'all the rights and powers of Sovereignty,' but the Māori version does not use the closest translation of sovereignty, which would have been 'mana.' Instead, it uses the missionary neologism 'kāwanatanga,' a transliteration of 'governorship.' In the Second Article, the English version guaranteed Māori 'the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties.' Kawharu's translation of this Article (see Appendix I for the full text) guaranteed Māori 'the unqualified exercise of their chieftainship over their lands over their villages and over their treasures all' (Kawharu, 1989, p. 319-320). The word used for chieftainship 'te tino rangatiratanga,' was widely understood by Māori at the time to have meanings including "chiefly authority, property in land and, by extension then and since, the entire fabric of Māori culture and self-possession" (Pocock, 2000, p. 28). The Third Article conferred 'all the rights and privileges of British citizens' to Māori. This has been considered the least contentious article, but as Meijl (2006, p. 173) states, it was politically compromised through the ultimate goal of the British colonisation of New Zealand: the complete amalgamation of Māori.

As Berke *et al.* (2002) summarise, the English version of the Treaty reflects the British view that it was an agreement of cession and indirect rule over indigenous people. The Crown assumed the autonomous sovereign right to govern and make laws over Māori, whereas Māori considered that they gave the Crown only the right of governance, rather than the right of sovereignty and authority to enforce the rule of law over Māori. As a result, the signing of the Treaty signalled the beginning of ongoing debate and conflict over matters of sovereignty and property.

The Treaty further reduced indigenous rights through the establishment of a foreign system of governance. Within the Treaty, it was implicitly assumed by the Crown that Māori were governed by a single social and political system. The reality was that there was no unitary governance binding Māori together, no Māori nation and no national voice as understood from a Western perspective, and whilst the signatory tribes of the Treaty claimed collective ownership and sovereign power over the land, the reality was that there were many

tribes (Berke *et al.*, 2002, p. 116). Each iwi had its own distinct history, customs and traditions, and therefore, the Treaty did not suit the nature of Māori governance but rather that of the Western colonial view of a unified nation.

2.3 Changes to the Māori World

In the century following the signing of the Treaty, Māori suffered greatly as a result of British colonisation. Whatever the intentions of the Treaty signatories, Māori were increasingly marginalised in their own land. The vast majority of Māori land was alienated by a variety of means. Some of this was through the legitimate and willing sale of the land, but there were many other forces at work, including large scale confiscation of lands as retribution for 'rebel' uprisings, which were often orchestrated by the colonial government. The Crown failed to uphold rangatiratanga, and also directly contravened the Treaty to acquire Māori land for the European settlers (Sole and Woods, 1996). The settlers' thirst for land and other natural resources rapidly led to a dramatic decline in Māori land holdings: between 1850 and 1920, Māori-owned land fell from 90 per cent to a mere 6.6 per cent of the total land area of New Zealand (King, 1997). The economic exploitation of Māori natural resources further eroded indigenous rights. Not only were Māori losing their land, but they were declining in population as well. Following the nineteenth century land wars, there was an expectation that the Māori population was on its way to extinction, and the government had a duty to 'smooth the pillow of a dying race' (Durie, 1998, p. 54). Te reo Māori was becoming spoken by fewer and fewer as a first language, and with the distancing of people from their traditional lands, there was serious concern about the future of Māori culture and identity. However, by 1900 it was clear that Māori, despite all odds, were going to survive, with strong efforts from the Māori leaders themselves to ensure a future for all Māori Durie (1998).

During the mid-20th century, Māori transformed from being a predominantly rural population to one which is now predominantly urban-based. After World War II ended, there was a concerted push towards urbanisation and within 25 years 80 per cent of Māori had moved from tribal lands to live in towns and cities (Durie, 1998, p. 54). This led to much debate amongst Māori about identity, how it should be reinforced and developed, and especially the differences between a universal Māori identity and one that centred on hapū and iwi. The issue of Māori representation also rose in prominence as a way to further address issues of social development, iwi relationships with the Crown, and ensuring that the guarantees promised by the Treaty of Waitangi were properly recognised. Out of discussions

surrounding such issues generated a great cultural resurgence amongst Māori, who were intent on striving towards being able to fully exercise te tino rangatiratanga, or complete self-determination, as promised in the Treaty.

2.4 Recognition of the Treaty of Waitangi

The Māori resurgence in the 1970s, which coincided with the burgeoning international civil rights movement, contributed towards a shift in attitudes towards Māori issues. Part of this was recognition that the guarantees of the Treaty of Waitangi were not being met, greater efforts needed to be made to protect the rights of Māori, and that Māori voices were being neglected in planning processes (Berke *et al.*, 2002). Up until this point, New Zealand society had virtually ignored "Māori grievances as mere background noise" (Sole and Woods, 1996, p. 3). But the government was willing to respond and established the Waitangi Tribunal in 1975 as a measure to address disputes and grievances between the Crown and Māori, and guarantee a level of partnership and participation for Māori involvement in civic life (Palmer, 2008). The Tribunal was granted the exclusive right to determine the meaning and effect of the Treaty as it is embodied within the two texts (Waitangi Tribunal, 2009, p. 1). The Tribunal acts as a commission of inquiry, rather than as an adversarial court, to make recommendations relating to the practical application of the Treaty. The preamble of the Treaty of Waitangi Act 1975 stated that the Act's purpose was to:

> provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty.

Initially, the Tribunal only had the power to deal with Crown actions from 1975 onwards, and it was not until the Waitangi Tribunal Amendment Act was passed ten years later that the Tribunal had the power to address claims that dated back to 1840 (Memon, 1993, p. 34). Since this extension to the date, the Tribunal has been inundated with over 2000 claims from iwi and hapū groups from around the country (Waitangi Tribunal, 2010). The Tribunal reports on its findings and makes recommendations on the claims that it hears, but under the Act the government has no responsibility to act on them.

2.5 Principles of the Treaty

The 'principles of the Treaty' are not written in the Treaty itself, but are determinations by the Waitangi Tribunal and the Court of Appeal of the underlying intent of the Treaty, so that they could be applied in a timeless fashion. The principles are used to define the contemporary Crown-Māori relationship and the mutual obligations and responsibilities it entails for both parties. When the Tribunal is judging whether or not a breach of the Treaty has occurred, it is instructed to use the 'principles of the Treaty' as criteria. In the same statute, the Tribunal is given the mandate to give definition to those principles (Mills, 2009, p. 681). However, there is no authoritative or comprehensive set of principles that are referred to, as they are contextual and fluid over time. Janine Hayward (Hayward, 1997) makes two important points regarding the principles of the Treaty. Firstly, the Treaty is a living document, which means that it needs to be interpreted in a contemporary setting. This means that new principles will continue to emerge from the Treaty and existing ones will be modified as the context changes. Secondly, she notes that the provisions of the Treaty itself should not be replaced by the principles that are emerging from it over time (Hayward, 1997, p. 475).

In 1987, the Court of Appeal found unanimously that the Treaty of Waitangi had established a partnership between the Crown and Māori, with the duty of both parties to act 'reasonably and in utmost good faith' towards each other, being implicit in the partnership (Sole and Woods, 1996, p. 3). The partnership between the Crown and Māori is the foundation from which the principles of the Treaty stem. The Court found that this partnership places an onus on the Crown to ensure a principle of active protection for Māori, the tribal right to self-regulation, the right of redress for past Treaty breaches, and the duty to consult (Shand, 2009; Sullivan, 2005). The guiding tenet is that the relationships between the two parties is one that is "akin to a partnership" where the partnership is developed between the two parties as changing circumstances require (Palmer, 2008, p. 148).

The definition of what this partnership actually consists of has been debated at length by both the courts and the Waitangi Tribunal, but as yet, consensus has not been reached in formulating a definition. The Tribunal and the Court of Appeal are in agreement that the partnership relies on the Crown's duty to consult and the principles of mutual obligation. The main difference between the two agencies is that the Tribunal considers the Treaty partnership to be a relationship of equal status balancing the concepts of kāwanatanga and rangatiratanga, while the Court of Appeal considers the partnership in terms of good faith, as found under civil law for business partnerships (Shand, 2009, p. 22). Successful partnership, from a Māori perspective, involves giving meaningful expression to tikanga Māori and to

be able to exercise rangatiratanga and manaakitanga (Shand, 2009, p. 22). The Crown-iwi partnership expectation is not directly devolved as a council-iwi partnership expectation, instead, under the RMA the principles of the Treaty must only be taken into account. For this reason, the Section 33 and Section 36(B-E) provisions of the RMA offer an option for local authorities to partner with Māori rather than require their partnership.

2.6 Economic Climate and Political Climate

Another contextual influence on the RMLR was that New Zealand underwent a period of remarkable reform in the 1980s. Economic theory and political process became closely intertwined as New Zealand became the world's case study of putting neo-liberal theory into action. As Kelsey (Kelsey, 1997, p. 349) reports, "This truly was an experiment. Economic theories which had never been tried, let alone proved, anywhere else in the world became New Zealand policy." Brian Easton believes that the reforms were perhaps the closest in the world to the application of 'economic rationalism' (Easton, 1994, p. 78), which has been defined by Michael Pusey as the 'doctrine that... markets and prices are the *only* reliable means of setting a value on anything, and... that markets and money can *always*, at least in principle, deliver better outcomes than states and bureaucracies' (Pusey, 1993, p. 14, emphasis in original). The economic rationale behind the neo-liberal reforms stems from the belief that a more open and competitive economy will propel growth and result in an increase in living standards. This was coupled with the ideological desire of the government to let the market determine how resources were to be allocated. Environmental management was only one facet of this dramatic political change, as far-reaching changes were made in all areas under the government's jurisdiction.

The National government which was in power from 1975 had taken a very 'hands on' approach to economic management; however, this changed dramatically when the fourth Labour government came to power in 1984 through a landslide victory in a snap election. The new Minister of Finance, Roger Douglas, with the support of several other senior ministers, was able to push for a radical change in economic policy. The government began pursuing a fiercely neo-liberal programme of reforms. Virtually the whole public service and all policy areas were subjected to analysis and reform. The hallmarks of neo-liberal thinking were clear in the resulting policy: privatisation, the advocacy of individual rights and private property and minimal state intervention were all favoured. The argument that the state is a poor economic manager was taken up strongly by the developers of policy, who gradually reduced

the amount of state involvement in the development and management of resources. This was achieved through the devolution of ownership and management responsibilities. These responsibilities were placed into the 'free market' arena, placing the decision making process out of the public realm and into the hands of corporations (Bührs, 2003, p. 92).

2.7 Environmental Concerns

The 1970s and 1980s were also a time of shifts in public opinion. The previous two decades had been characterised by state-sponsored development, which caused widespread concern about the environmental impacts of such projects. Governments were increasingly challenged on the environmental impacts of large scale projects including the logging of indigenous forests, the damming of rivers for hydro power schemes and the clearing of 'scrub' (regenerating native forest) for farm land. The relationship between government and environmentally-minded groups became increasingly adversarial, with the nascent environmental movement gathering momentum from the public outcry surrounding the Manapouri Dam Scheme (Memon, 1993, p. 54).

As both Bührs (2003, p. 96) and Beck (1992) point out, most environmental issues and risks cause conflict and have the potential to undermine the legitimacy of the government. In order to combat this, governments, including that of New Zealand, have sought to disengage the immediate political process from environmental decision-making in order to diffuse such issues. The environmental law reforms which were borne out of the political upheaval of the late 1980s, attempted to de-politicise environmentalism and removed ideology from environmental decision making and the development of policy. The neoliberal climate also led to abandonment of state involvement in its historical role as developer. Instead the desire was to set up an environmental law regime that would allow for councils to make front-line decisions about development supported by a structured environmental assessment process.

Māori concerns were also influential in the law reform. They were unhappy about the degradation of their land, waterways and resources. During the 1970s and 1980s many became active in protesting government-driven development and their lack of influence on decision-making. Māori were involved with large scale court cases such as the 1978 Kaituna and 1981 Motonui-Waitara claims heard by the Waitangi Tribunal, which dealt with the physical and spiritual degradation and pollution of water. Protecting the integrity of water is one of the most important responsibilities of kaitiaki. The wellbeing of water is crucial to Māori as it is a provider of life; a source of mahinga kai, tribal identity and mana (Rochford,

2004; Selby *et al.*, 2010; Tipa, 2002; Townsend *et al.*, 2004). These pivotal cases set legal precedents for assessing and protecting Māori values in environmental matters. In the case of the Motonui-Waitara claim, the Tribunal found the Crown had failed to recognise Māori interests guaranteed by the Treaty, that those interests should have been protected in New Zealand's laws, and that Māori interests should have been taken into account in the management of natural resources (Stokes, 1992). As part of the Crown's response to these reports, the recognition of Māori rights to be involved in resource management decision-making became incorporated into a range of statutes, perhaps most importantly in the RMA.

For many Māori, these court cases were the first time that they had mobilised en masse over an environmental management issue. It was also the first time that environmental groups had created strong alliances with iwi for a common cause (Mills, 2009, p. 689). Where there were common interests, Māori worked alongside environmentalists to achieve change, however, there are many cultural and environmental differences which have continued to cause conflict between these two groups (Mills, 2009). Dividing these two groups into these categories is clearly a crude generalisation and there are many crossovers and exceptions between them. Alexander Gillespie (Gillespie, 1998) unpicks some of these tensions, finding that the holistic worldview of Māori did not always sit easily with conservationists, who saw no place for humans or their careful use of resources in their vision of environmental protection. The Māori environmental philosophy, as it was expressed in early Waitangi Tribunal claims, placed an emphasis on the protection of the physical and spiritual wellbeing of treasured resources. This notion appealed to the wider environmental movement, however, these values were not, and never have been, isolated from the social, political and economic needs and concerns of Māori (Mills, 2009, p. 692). Gillespie identifies this as a key reason for the growing tensions between Māori and environmentalists, who faced disillusionment as they realised that they had erroneously assumed the Māori environmental ethic was closer to their own than it was in reality (Gillespie, 1998).

2.8 The Resource Management Act 1991

These various influences during the 1980s had considerable impacts on the bold revision of the multiple laws which dealt with resource and environmental management. After a period of extensive consultation, the RMA 1991 emerged as the central plank of a new set of laws and institutional responsibilities. This process, known as the Resource Management Law Reform (RMLR) will be described in greater detail in the following chapter. The RMA

was designed to provide a statutory framework for a "relatively more holistic and more integrated approach to environmental planning" (Memon, 1993, p. 86). Previously the approach to environmental planning had been piecemeal; its replacement was an ambitious piece of policy which replaced more than 25 natural resource and planning statutes, along with modifications of more than 150 laws and regulations (Young, 2001, p. 1). Although the Act was a fourth-term Labour initiative, it was enacted by the National-led government in June 1991, demonstrating the widespread support that this policy change had across the political spectrum.

In terms of Māori involvement in resource management, the RMA was a vast step forward in terms of intent and the recognition of the Treaty of Waitangi. The Act refers specifically to "taking into account the principles of the Treaty," unlike most other policy in place at the time. Māori terms are also used despite the considerable challenge in reaching a common understanding of their intended meaning. The RMA calls for consultation with iwi, recognises their responsibilities regarding kaitiakitanga and their relationship with their ancestral lands, water and other taonga. Despite the many perceived weaknesses of the Act, there was a serious attempt to acknowledge the rights of Māori in resource management (Berke *et al.*, 2002; Young, 2001).

Local authorities initially struggled with the changeover from the Town and Country Planning Act to the RMA, with many acting as though the two pieces of legislation were the same. Over time, however, both local authorities and their constituents have come to terms with the RMA's content and its implications, and are now well-versed in its application. It has since been acknowledged that although the law reform process was relatively well-funded, the actual implementation was not and this is where it foundered for a long time. By devolving most resource management to local authority level, the central government took a largely hands-off approach (Young, 2001). Lack of central guidance and under-resourcing meant that the path to effective implementation of the RMA has not been without difficulty and challenge.

2.9 Conclusion

The development of New Zealand as a nation has been relatively rapid compared to other countries. Today the relationship between the Crown and Māori still harks back to New Zealand's founding document, te Tiriti o Waitangi, only 170 years ago. Since then, Māori have faced considerable challenges in having their voices heard and their rights recognised,

and have overcome many barriers. Many of these issues have revolved around the immense struggle to have the guarantees of the Treaty honoured – something which is proving to be an ongoing challenge for New Zealand. The Waitangi Tribunal and Māori environmental activism have added significant impetus to a much greater recognition of Māori within policy, although there is still a great distance to go before there is a complete integration of Māori cultural, spiritual and traditional values into central and local government decision-making processes, particularly those related to the environment. As Memon (1993, p. 132) concludes, the Treaty of Waitangi guaranteed Māori ownership of these resources, and therefore by implication, a major say in their management. The RMA held promise that this might be brought to fruition. Chapter Three discusses the history of the RMA's specific provisions for Māori involvement in the management of resources, and provides an overview of the reviews of these provisions since their implementation.

Chapter 3

The Resource Management Act and its Engagement with Māori

3.1 Introduction

The Resource Management Act was hailed internationally as a groundbreaking piece of legislation which promoted integrated environmental management. It also promised a new relationship for local authorities with Māori, one that valued the input of tāngata whenua in deciding on resource management matters. Twenty years on, the RMA has had ample time to become part of the New Zealand political landscape. The implementation of the RMA has been closely observed, with many reports, reviews and investigations focusing on its successes and failures over the years. This chapter outlines the crafting of the Act, with particular focus on processes that sought advice and input from Māori; it then describes the transfer of power and joint management agreement mechanisms, and lastly, provides an overview of some key reviews of the RMA's provisions for Māori involvement.

3.2 Crafting the Resource Management Bill

The reforms that led to the RMA were initiated by Geoffrey Palmer, the then Minister for the Environment. He saw political opportunity for extensive legislative reform and acted swiftly, realising that it was a window of opportunity that would not arise again for a long time (Young, 2001). A core team was quickly gathered in 1988, consisting of Denise Church, Joan Allin, Cathryn Ashley-Jones and Stephanie Milroy, to drive the reform process and to draft

the Resource Management Bill. Denise Church was from the Ministry for the Environment, Joan Allin and Stephanie Milroy were both lawyers, and Cathryn Ashley-Jones came from Treasury. Not long into the process, Shane Jones, from the Ministry for the Environment, was recruited into the team, replacing Stephanie Milroy and equipping the group with a sound knowledge of Treaty issues and Māori perspectives. They were given what was essentially a clean slate to create boundary-pushing policy, which would attempt to capture the public's view of how to improve resource management law (Young, 2001, p. 26). Two discussion papers were released in quick succession, accompanied by a number of other background papers (Barnes, 1988; Ministry for the Environment, 1988a,b). This was supplemented by extensive public consultation as the group travelled the length and breadth of the country to conduct hui and meetings around the drafting of the resource management policy. This process was known as the Resource Management Law Reform (RMLR).

The RMLR was the first public consultation process on proposed law at such a large scale, attempting to reach out to all sectors of the New Zealand population. Māori were targeted in the consultation rounds by the RMLR core group, and despite the rapid pace at which the law reform process proceeded their participation was considered to be relatively extensive (McClean and Smith, 2001). One of the main topics discussed was how to achieve effective Māori representation at the local government level. This was pushed for by Philip Woollaston, who was Minister of Local Government, with a Bill that made Māori representation compulsory at local government level. Unfortunately, this Local Government Bill did not get any further than its first hearing as it disappeared with a change of Minister (Young, 2001, p. 28).

Shane Jones, one of the core members of the original RMLR group, recalls that kaumātua, such as Aila Taylor and Reverend Māori Marsden, were heavily in favour of giving legal recognition to Māori culture and traditions as part of resource management provisions (Jones, 2005, p. 25). This did not however, address one of the most pressing concerns for the majority of Māori - that of resource ownership. As Article II of the Treaty of Waitangi guarantees Māori the full authority over their natural resources, it was deemed crucial by Māori that their property rights were clearly established over the resources guaranteed to them in the Treaty (such as water, foreshore and seabed, indigenous flora and fauna) (McClean and Smith, 2001, p. 168). The decision made over this issue was one of the most pivotal moments for Māori interests in the creation of the RMA. At a hui at Taumutu on the significance of the Treaty and its role in resource management law reform, it was decided on the spot, in the face of a challenge from a number of attendees, that the proposed Bill was not the place to tackle these complex issues. Many prominent iwi leaders, including Sir Bob

Mahuta and Sir Tipene O'Regan, were of the belief that the confirmation of Māori property rights needed to be settled before regulatory reform was addressed. Sir Geoffrey Palmer understood immediately the size of this challenge and realised that unless it was dealt with swiftly, his plans for resource management law reform would be sunk. He promised that the issues of resource ownership would be addressed in a separate forum in the near future.

It was recognised by Māori that this was a missed opportunity to have these issues resolved (Jones, 2005; Young, 2001). The effect was that the RMA focused purely on management and remained silent on the issue of resource ownership. Some Māori were reassured by the fact that the Waitangi Tribunal was now in full force, and making a significant impacts on policy for Māori and the environment as a result of its hard hitting reports to provide redress to iwi (Young, 2001, p. 26). The promise shown by the Waitangi Tribunal has, however, been limited due to the non-binding nature of its recommendations. Its effectiveness is reliant on the political buy-in from the government, and recent analysis of its effects show that the buy-in is often lacking and very few meaningful outcomes have been achieved as a result of the Tribunal's recommendations (Andrew, 2008).

The role of the Treaty in resource management law was of intense interest to Māori. The notion that the legislation would protect the special relationship between tāngata whenua and the Crown, as outlined in the Treaty, had been dropped after initial enthusiasm for its inclusion in the Resource Management Bill. The terms 'kāwanatanga' and 'rangatiratanga' were also toyed with for inclusion in the Bill, but were ultimately dropped during the Select Committee. The Treaty reference was eventually weakened to what is now Section 8 of the RMA:

> In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (te Tiriti o Waitangi).

The findings of the Waitangi Tribunal on the Waitara-Motunui claim and other environmental claims had heightened awareness of concepts of 'kaitiakitanga' and 'mauri,' and these found greater favour in the drafts of the Bill. 'Mauri' was later removed, but 'kaitiakitanga' made it into the legislation. Initially, Section 7(a) equated kaitiakitanga with the 'ethic of stewardship,' a definition that was obtained from the Minister of Māori Affairs, Winston Peters (Young, 2001, p. 28 - 29); this was later challenged. It was replaced with what now stands as Section 7(a):

> the exercise of guardianship by the tāngata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources; and includes the ethic of stewardship.

The ethic of stewardship was removed and added as a separate subsection (Section 7(aa)). These provisions for Māori were an essential part of the resource management law reform, and their inclusion was strongly influenced by Geoffrey Palmer, Shane Jones and a host of Māori advisors (Jones, 2005; Young, 2001).

Despite the efforts of the Labour government, the Resource Management Law Reform Bill did not come to pass; Labour lost the 1990 election and was replaced by a National-led government. Simon Upton was appointed as Minister for the Environment, where contrary to expectation, he decided to review the existing Bill rather than abolishing the work that had already been done and replacing it with something more in line with the National Party's leaning (Young, 2001). He headed a review group composed of: Tony Randerson, a lawyer; Brent Wheeler, an economist; Guy Salmon, a seasoned environmental campaigner; Ken Tremaine, a planner; and Prue Kapua (née Crossan), a lawyer. Part II of the Act, containing the purpose and principles, was placed under further scrutiny, and after a fairly short time the review group had altered the Bill to a point at which it was widely accepted across the political spectrum. It was evident in its reception at Parliament that the legislation had wide appeal as the Bill passed uncontested through its final reading in August 1991.

In its final form, Section 5 of the Resource Management Act 1991 outlines the central objective of the Act, stating that:

1. The purpose of this Act is to promote the sustainable management of natural and physical resources.

2. In this Act, sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and *cultural* wellbeing and for their health and safety while—

   (a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

   (b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

   (c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

In seeking to enable "people and communities to provide for their social, economic, and cultural wellbeing" (my emphasis), there is an implicit declaration that Māori wellbeing is considered to be of vital importance in the use of this Act. The eventual Act had more than 30 sections that pertained directly to Māori (Jefferies and Kennedy, 2009b), but the most oft-cited are Sections 6(e), 7(a), and 8.

- Section 6(e) states that, "the relationship of Māori and their culture and traditions with their ancestral lands, waters, sites, wāhi tapu, and other taonga" should be recognised and provided for as a matter of national importance
- Section 7(a) details the requirement to have particular regard to kaitiakitanga
- Section 8 states the requirement to "take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)" In addition to this, there is also a growing body of case law which deals with sections 6(e), 7(a) and 8 of the Act individually, and in their combined effect (Mutu, 2010, p. 17).

Another key provision for Māori is for the recognition of iwi management plans (IMPs). These are referred to throughout the Act as "a relevant planning document recognised by an iwi authority and lodged with the council." IMPs are not considered to be official planning documents, but are advisory to councils as they describe resource management issues of importance to tāngata whenua. They are generally drawn up as:

> an expression of rangatiratanga to help iwi and hapū exercise their kaitiaki roles and responsibilities. IMPs are a written statement identifying important issues regarding the use of natural and physical resources in their area.
>
> (Quality Planning, nd)

Iwi management plans must be taken into account when preparing or changing regional policy statements and regional district plans, however there is no legal requirement for iwi or hapū to create them, or for councils to follow them. A survey in 2004 showed that nearly half of all iwi had an IMP, and most found that their creation had been helpful in articulating a shared iwi vision for the environment; however, they expressed disappointment that the documents had not proved as influential with local government as hoped (Jefferies *et al.*, 2004, p. 25).

3.3 Section 33 Transfers of Power

The strongest tools for Māori expression of rangatiratanga in decision-making authority over resource use included in the RMA 1991 were the Section 33 transfers of power, which permit the devolution of power to iwi authorities. Section 33 is a mechanism which provides for the transfer of powers, duties and functions from local authorities to public authorities. The most important sections are detailed in full below (see Appendix II for full text of Section 33):

> (1) A local authority may transfer any one or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.
>
> (2) For the purposes of this section, public authority includes any local authority, iwi authority, board of a foreshore and seabed reserve, government department, statutory authority, and joint committee set up for the purposes of section 80.
>
> (6) A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed.

An iwi authority is defined in Section 2 as 'the authority which represents an iwi and which is recognised by that iwi as having authority to do so.' Throughout this thesis, Section 33 will generally be referred to as a 'transfer of power,' which will be used to include potential transfers of function and duties, or any combination of these, as part of its meaning.

The Ministry for the Environment (MfE) is an advocate of Section 33, stating that it can be used "to protect our resources more effectively and give Māori greater participation in resource management decision-making" (Ministry for the Environment, nd). They also suggest that it be used in tandem with a joint management agreement to set out the finer details delineated in the obligations and responsibilities of the transfer. Transfers of power have been promoted in various forms by the MfE, including audiovisual material (Ture, 1999) and written guides to the RMA (Maynard, 1999).

In 2000, Rennie, Thomson and Tutua-Nathan (Rennie *et al.*, 2000) undertook a New Zealand-wide survey of district and regional councils to discover whether there had been any Section 33 transfers of power to iwi under the Resource Management Act. This extensive review revealed that up until that point, there had not been a single transfer of power anywhere in the country, although there had been a number of applications. This prompted a

closer look at the reasons why this mechanism had not yet been used by iwi or councils to manage natural resources in their areas. Rennie et al. identified the primary reason stated by councils was a direct result of a lack of specific requests in written form from iwi authorities. They delved deeper into this limited and simplistic explanation and uncovered a wider range of factors which were inhibiting the use of Section 33 (Rennie *et al.*, 2000, p. 1), which are listed as follows:

- the use of an inappropriate process
- concern over the applicant's status as an iwi authority
- the lack of specificity of the application
- council concerns over the structure and resources (financial and technical) of the applicant

Aside from these main findings, they noticed that there were distinctly different attitudes towards, and understandings of the role and intention of Section 33. The Crown and iwi understood that it would empower iwi to exercise rangatiratanga to some degree, whilst local authorities considered it primarily in terms of ensuring cost-effective administration of their district. It was this difference in perspectives that Rennie *et al.* (2000) highlighted as being potentially the largest barrier to iwi receiving a transfer of power. Local authorities were seen to be lacking in initiative in seeking to share power with iwi, with the criteria in the Act making it easy to create barriers to prevent the use of Section 33 if there was a lack of will to establish one, particularly as the Act does not set out who bears the cost of the transfer.

A subsidiary finding was that there were significant weaknesses in the current information management systems of the councils and the Ministry for the Environment. For instance, there is no single national database that documents proposals and requests for transfers of power, and local authorities do not maintain readily accessible records either. Rennie et al. point out that the Ministry for the Environment received notification of some of the proposals for a transfer of power, but not the final outcome of the application (Rennie *et al.*, 2000). This lack of documentation makes it difficult to accurately determine how common requests are for transfers of power.

3.4 Joint Management Agreements

The Ministry for the Environment recognised that, although council practices were improving across New Zealand, there remained some difficulties in the understanding and application of the provisions for Māori (Ministry for the Environment, 2005). It was with this in mind that the Resource Management Amendment Act (RMAA) 2005 set out to provide greater clarity and legal certainty for councils, applicants and Māori. To remedy the lack of a specific statutory provision for joint management of resources, the RMAA saw the insertion of Sections 36B-E into the RMA (see Appendix II for the full text of these sections). These sections introduced joint management agreements, by endowing local authorities with the power to make joint management agreements with public authorities, iwi authorities and groups representing hapū. These agreements permit parties to jointly perform or exercise any of the local authority's powers, functions or duties under the RMA pertaining to natural or physical resources. The primary goal of joint management agreements is to develop and encourage collaborative relationships between local authorities and tāngata whenua, which some councils had already begun developing with Ngāti Tūwharetoa, Te Arawa and Ngāiti Whātua (Ministry for the Environment, 2005).

In 2009, Natalie Coates investigated the premise that joint management agreements were merely an empty promise to assuage Māori desires to exercise kaitiakitanga in a practical manner. At the time of her research, there had only been one joint management agreement under the RMA signed (in early 2009) between the Taupō District Council and the Tūwharetoa Māori Trust Board for the hearing of applications on multiply-owned Māori land. This sole example suggested that there were a number of barriers in existence that were preventing this RMA provision from being used. Coates (2009) found that these barriers were comparable to the inhibiting factors that Rennie *et al.* (2000) identified for transfers of power, including financial constraints on the iwi's behalf, concerns of economic and resource efficiency for the local authority, lack of trust between potential signatory parties, and the impermanent nature of the agreements as either party may cancel the agreement at any stage. The largest issue was a matter of political will:

> For joint management agreements to be implemented iwi thus need a willing local authority. This willingness, however, may not necessarily be forthcoming unless the council trusts the iwi authority, they see it in their interests to share the function, and the joint management agreement also has a degree of political backing from the wider community.
>
> (Coates, 2009)

In her assessment of the likelihood of iwi and councils overcoming these factors, Coates foresaw that these challenges were a substantial barrier to convincing councils that joint management agreements were a worthwhile option to pursue. She concluded that even if joint management agreements were to occur, they would be in a rather restricted form.

Coates anticipated that with one joint management agreement up and running, other councils and iwi might consider establishing their own. Her belief is that this will only occur given time, and if the relationships between iwi and councils are more closely fostered and cultivated. She is optimistic that over time, with existing joint management agreements proving effective, the scope of future agreements might be more expansive. Another option would be to further modify the RMA to make it a more enabling piece of legislation, through the inclusion of provisions that would help overcome the barriers that currently exist (Coates, 2009, p. 39).

Joint management agreements require close and trusting relationships between iwi authorities and both central and local government. They also compel the development of capacity to share monitoring, funding and management requirements, and to establish direct, efficient and genuine communication processes between parties. Joint management arrangements encourage the use and development of local knowledge and skills, which is not only beneficial for the iwi involved, but also to the wider community. All of these processes stimulate cross-fertilisation of ideas, which will hopefully lead to better resource management practices and cultural wellbeing.

3.5 Reviews of Māori Provisions in the Resource Management Act

There has been a steady output of reviews of the success (or otherwise) of the RMA over the past twenty years. These come from a variety of different perspectives – internal government

reviews, research and critiques by scholars and practitioners, and some external reviews. A significant number of these have investigated how effective the Act has been in meeting its obligations to Māori, and those that don't specifically examine this facet of the RMA, often make reference to the issues of Māori engagement as one of the more important responsibilities of administering the Act.

Julie Frieder, an American scholar, visited New Zealand five years after the introduction of the RMA with the purpose of reviewing its implementation (Frieder, 1997). She did so simply by using the stated goals of the RMA to judge whether or not it was meeting its intended aims. Her work did not specifically focus on how the RMA was working in terms of increasing and improving engagement with Māori, but as one of her final recommendations she suggested that both central and local government move to establish stronger and more genuine partnerships with Māori (Frieder, 1997, p. 69). She notes that given the aim of integrated management, there should be "hundreds of new partnerships and institutional arrangements, cooperation, public private funding partnerships, co-management, combined planning and joint hearings" being fostered and developed (Frieder, 1997, p. 69).

Frieder sees a clear link between Māori values of reciprocity, respect, sustainability and connectivity, and the practice of sustainability outlined by the RMA. To enable these values to contribute positively to the resource management practices in New Zealand, she lists a number of recommendations which would, if enacted, support Māori aspirations for closer involvement with resource management decision-making:

> - Move Māori divisions to partnership status within all resource management organisations structures (central, regional and local government)
> - Develop capacity for co-management, co-funding, co-monitoring
> - Improve communication
> - Utilise regional and local expertise in the development of national programmes, policies and standards
> - Encourage cross-fertilisation of ideas by sending central government personnel to regional and local government and bringing regional/local personnel to the Ministry for the Environment for a meaningful period of time
>
> (Frieder, 1997, p. 63)

These suggestions point toward use of mechanisms like the transfers of power and joint management agreement.

A working paper, commissioned by the New Zealand Treasury in 1998, discussed the role of devolution in the RMA (Kerr *et al.*, 1998). It discussed the complexities involved in devolving power, and despite the enthusiasm that the New Zealand government had for devolution of power from higher levels of government to lower levels, asserts that it was not always desirable or effective. The authors judged the suitability of devolution as an option using three criteria to rate the potential effectiveness of the decision-making. They believed that for it to be effective, devolution must result in informed, balanced and cost-effective decision making. The people who experienced the effects should be the ones making the decisions, due to their subjective preferences about the issue. Their decisions should be supplemented by those people with the skills and resources to access the objective information on the issue. Balanced decision making occurred when those who made the decisions were the recipients of the benefits, and the bearers of costs. Cost effective decision making should be a paramount consideration, and in instances where the costs were high and the preferences were reasonably homogenous, national policies were generally considered to be a better option (Kerr *et al.*, 1998, p. 4). If these three criteria can be met for the devolution of resource management practices to Māori, then the use of the two provisions in the RMA for co-management should be considered as a viable option for councils.

Interestingly, whilst discussing devolution, the Treasury Working Paper does not refer to devolution to agencies outside of local government, such as an iwi authority, despite the provisions for devolution in the RMA. Instead, it only considers devolution in terms of existing government bodies without discussing the possibility of devolving power to an external agency. This working paper considers devolution to be a promising alternative to centralised decision making, but many of the barriers to successful implementation foreseen by the authors are consistent with Rennie *et al.* (2000) and Coates (2009) as to why local authorities may not consider the possibility of co-management arrangements or devolution of powers to iwi authorities.

The Parliamentary Commissioner for the Environment (PCE) published a report on how successful the RMA has been in terms of councils meeting their obligations to tāngata whenua in 1998 (PCE, 1998). This report contrasts with the Treasury Working Paper on devolution published in the same year, as it offers a range of perspectives on devolution and co-management from Māori. The PCE found that in the years between 1992 and 1998, there was a significant improvement in the level of understanding and awareness of councils of their requirements to recognise and provide for the values and concerns of tāngata whenua. Tāngata whenua had likewise gained an increased level of understanding of the opportunities and processes involved in the RMA. However, the PCE noted significant challenges to

guaranteeing Māori an active role in environmental decision-making (PCE, 1998).

The PCE concluded that the changing relationship between central and local government, through the devolution of responsibility, had significant impacts on tāngata whenua. They are now expected to work alongside local government, who have not been well guided through the transition by central government. The lack of national policy standards or frameworks for working with tāngata whenua meant that local government did not have anything from which to base their efforts to comply with the RMA requirements. This absence of national guidelines has, aside from not assisting councils on how to approach their responsibilities to Māori with efficiency, reliability and consistency, meant that there are no formal accountability processes to assess the performance of local authorities. Tāngata whenua were unhappy with this situation but were fully aware that the only way that they could challenge councils on their performance is through taking legal action.

The investigation by the PCE also entailed a brief look into the uptake of and attitudes towards Section 33 transfers of power, reporting that tāngata whenua experienced widespread reluctance within councils to even begin to contemplate potential transfers of powers, duties or functions (PCE, 1998, p. 71). They found that no requests for transfers of power had been granted, despite some being reported by iwi. The general feeling was that the concept was too challenging for councils, and they remained fearful and distrustful of the idea of devolution of powers to Māori. This perception led to frustration for tāngata whenua, who were keen to put their practical skills into action and demonstrate their commitment to participating in environmental management. Tāngata whenua also expressed a sense of disillusionment with councils, who they observed willingly pursuing contractual arrangements with consultants and external providers for various procedural, technical and management tasks, while they would not consider offering contracts to an iwi authority (PCE, 1998, p. 71). Tāngata whenua voiced the opinion that their contributions would enhance environmental management practice, and create employment and educational opportunities for hapū and iwi, which follow Frieder's (1997) recommendations discussed earlier. Even if tāngata whenua were to enter into an agreement under Section 33, the PCE considered that they would not be in a very secure position as the constraints of the provisions mean that councils retain the ultimate authority, and are able to change the conditions and terms, or to withdraw from the agreement at any stage (PCE, 1998).

Janine Hayward presented a report on the relationship between Māori, local government and the Treaty to the Crown Forestry Rental Trust in 2002. This report included a summary of the work that had already been completed on assessing the success of the RMA

in terms of meeting its obligations to tāngata whenua. Hayward (2002, p. 68) considers that the "RMA has, for the most part, created an environment in which there is potential for Māori participation in local environmental decision-making, but only where goodwill exists between Māori and local government." It was widely recognised that Māori generally wished to deal with the representatives of the Crown due to the Treaty relationship, but the RMA requires relationships to be based at the local government level when dealing with matters of environmental management. Māori felt a degree of uncertainty and frustration in their relationships with local authorities. This changed when the Local Government Act (LGA) 2002 restated the relationship between local governments and the Crown. Section 4 of the LGA states that the principles of the Treaty must be taken into appropriate account to improve and maintain opportunities for Māori to participate in local government decision-making processes. Now that the RMA and the LGA are more closely aligned in their obligation to take the principles of the Treaty into account, Māori may begin to feel that they are guaranteed more security in their relationships with local government.

In looking at previous research, Hayward (Hayward, 2002) suggests that the concentrated focus of case law and reviews on 'consultation' has meant that direct Māori participation in resource management, such as transfers of power and iwi management plans, have been overshadowed. She suggests that future research should seek to make a case for the participation of Māori in local government decision-making processes.

The *Planning Under a Co-operative Mandate* (PUCM) research programme, based out of the University of Waikato, has undertaken a multi-year investigation on whether the New Zealand government's intent to establish a devolved and co-operative system of governance for planning will result in significant improvements in achieving sustainable development (Planning Under a Co-operative Mandate, nd). Their particular interest lies in the shift from 'government' to 'governance' and the quality of district and community plans. Some of their work has looked at Māori participation under the RMA, with reports produced on Māori participation in the resource consent processes and relationship-building between iwi and local government (Backhurst *et al.*, 2004; Neill, 2003). Key findings have been that Māori have generally been dissatisfied with councils' performances in terms of meeting the provisions of both the Treaty of Waitangi and the RMA. Many Māori cite poor or limited communication as hindering the development of functional and beneficial relationships with local government. Their research has also shown a gulf between agency self-perception and external perspectives, with Neill stating that, "the differences shown in reciprocal perceptions have serious implications for establishing a sound working partnership between councils and hapū/iwi in their areas" (Neill, 2003, p. vii). More recent work has focused on providing

iwi and councils with the tools to successfully navigate cross-cultural resource management through the RMA and developing understanding of the principles of kaupapa Māori in planning (Jefferies and Kennedy, 2009a; Kennedy, 2008; Kennedy and Jefferies, 2009).

A United Nations Special Rapporteur, Rodolfo Stagenhaven, visited Aotearoa in 2005, producing a report on the status of Māori in terms of indigenous rights. This visit placed a strong focus on the contentious foreshore and seabed issue, but also addressed the pace of redress through the Treaty claims process and the need to improve social indicators such as health, education, housing, employment and income for Māori. The report recognised the efforts of the state to reduce the existing inequalities between Māori and non-Māori. The Special Rapporteur made a number of recommendations to guide and improve New Zealand's strategies to better recognise indigenous rights. One recommendation which particularly resonates with Māori aspirations of tino rangatiratanga, of which the expression of kaitiakitanga is a significant part, is that:

> Iwi and hapū should be considered as likely units for strengthening the customary self-governance of Māori, in conjunction with local and regional councils and the functional bodies created to manage treaty settlements and other arrangements involving relations between Māori and the Crown.
>
> (Stavenhagen, 2005, p. 21)

This recommendation, if heeded, offers a really strong base from which to engage with the provisions for Māori under the RMA, and suggests that it will be essential to build stronger, more functional and more equal relationships between Māori and local and central government. A follow up visit by a second UN Special Rapporteur, James Anaya, in April 2010 found that progress was being made in meeting the recommendations set by the previous Rapportuer. Nonetheless, the lack of Māori bargaining power in settlement negotiations and policies restricting the transference of Māori land back into Māori ownership and/or control remained problematic. He urged the New Zealand government to provide constitutional protection to the principles of the Treaty and those related to internationally-protected rights: "From what I have observed, the Treaty's principles appear to be vulnerable to political discretion, resulting in their perpetual insecurity and instability" (UN News Centre, 2010). Ensuring that the (ever-evolving) principles of the Treaty are upheld will go a long way towards ensuring that Māori are able to participate fully in the management of their traditional resources.

3.6 Māori Reflections on the Implementation of the Resource Management Act

A number of Māori leaders have discussed the role and effectiveness of the RMA in terms of Māori aspirations for environmental governance and rangatiratanga. The RMA is only one part of the constellation of policy which places an emphasis on enabling Māori agency in managing the natural environment, but it was one of the first pieces of legislation to acknowledge the rights of Māori in this way (Mutu, 2010). From Margaret Mutu's perspective, the RMA was seen as an opportunity to forge new partnerships that entrusted Māori with the legal power that would secure their involvement in the management of natural resources and ensure the protection of their wāhi tapu and cultural heritage. It was anticipated that Māori environmental values were to genuinely inform local, regional and national levels of environmental resource management and policy, which would result in a dramatic shift in the political landscape, particularly at a regional and district level. Māori are now well aware of the statutory provisions which can assist in their role as kaitiaki. It has taken some time for Māori to come to grips with the range of statutory requirements and how they impact on tāngata whenua , as well as the opportunities that they offer for greater and more effective involvement in resource management (Mutu, 2010).

Shane Jones, one of the members of the core RMLR team, has seen the implementation of the RMA from two vantage points.[1] He believes that although the RMA has improved the treatment of Māori resource management issues since the 1960s and 1970s, it has not entirely met with Māori expectations (Jones, 2005). The devolution of resource management to subnational levels of government was inadequately funded and supported, leaving Māori to deal with often uninterested and poorly resourced local authorities. Iwi dissatisfaction with their relationships with local authorities has often resulted in fatigue and disenchantment with the RMA process. Importantly, Jones considers that the RMA implementation has overlooked the fact that Māori were more interested in having the power to make decisions, rather than being subjected to its consultative processes and constant dealing with local, rather than central, government (Jones, 2005, p. 26).

In an address to the Resource Management Law Association in 2001, Morris Te Whiti Love reflected on ten years of the RMA for Māori. He felt that many Māori had been disappointed that the Act had not reached its full promise. One major hindrance was the fact that local government had no real obligation to develop a closer and more accountable partnership

[1] As both tāngata whenua and in his position as a Member of Parliament.

with iwi authorities. Another factor was the lack of cohesive and mandated iwi authorities, which impeded participation in resource management, apart from in areas like the southern South Island with Ngāi Tahu at the helm. Love predicted that it would be at least another ten years until iwi were enjoying full and effective participation in resource management matters, but he suspected that in those ten years, the RMA would come under a large scale review and would perhaps change the legislative landscape (Love, 2001).

3.7 Conclusion

There is undoubtedly growing recognition of the rights of mana whenua in the management of the environment and its resources. This stems from both the RMA and the requirements of the Local Government Act 2002, which have pushed local authorities to actively engage Māori in the processes of resource management planning (Tawhai, 2010). Successful and meaningful involvement for Māori in resource management is often not straightforward. Matters of resourcing, finances, time, capacity and the sheer number of other responsibilities that tāngata whenua have outside of resource management issues are amongst some of the challenges. Other issues may include conflict as a result of more than one iwi/hapū claiming mana whenua status over the same area, conflicts of interest, internal political processes, patchy and/or fraught existing relationships with the local authorities, and enabling the participation of Māori who are living outside of their rohe (Frieder, 1997; Hayward, 2002; Mutu, 2010; Neill, 2003; Tawhai, 2010; Vince, 2006).

The RMA has dramatically changed the political and legal landscape of Māori participation in the right of management of natural resources. There is no doubt that the RMA has improved consultation with Māori, but it is apparent that the uptake of the power devolution provisions have been far less successful, and that shifts have been slow in other areas. There is still considerable ground to gain before council-tāngata whenua relationships are true partnerships, but there is evidence that relationships are maturing, so that the potential for co-management arrangements between Māori and local authorities is seen to be slowly increasing (Coates, 2009; Tawhai, 2010).

To date, reviews of RMA performance have placed a heavy emphasis in reviews of the RMA on the role of consultation in the implementation of the Act. As Hayward noted, this has been to the detriment of promoting those RMA provisions which offer opportunities to Māori for greater and more direct involvement with resource management decision-making.

Chapter 4

Māori and the Co-management of Natural Resources

4.1 Introduction

Māori identity is closely intertwined with the environment, and Māori have a strong cultural practice of resource management. Despite having lost ownership of much of their land and resources, Māori still retain a cultural obligation to care for the land and seek to exercise their right as kaitiaki. Although they have a legal right to do so through the Treaty, it has been problematic to assert this right, and it is only within recent years that the state has looked to ensure that Māori are able to participate in resource management decision-making. One of the means through which this has been promoted is the co-management of resources, whereby the state (or its agent, such as a council) enters into a partnership with iwi (or another agency or community) to collaboratively manage the resource.

Howitt (2001) identifies four central reasons for placing indigenous rights at the heart of resource management: seeking to achieve both justice and sustainability for indigenous peoples, namely, social and environmental justice; ecological sustainability; economic equity; and cultural diversity. These four reasons will be expanded upon in this chapter, through the exploration of Māori involvement in resource management, before examining the concept of co-management as a way to ensure effective participation by indigenous peoples in resource management. Finally, co-management in New Zealand will be discussed.

4.2 Māori and the Environment

Māori have always planned for and managed their environment and resource use. Matunga (2006, p. 28) borrows from Friedmann and Hudson's definition of planning as a professional activity and social process that links knowledge with organised action (Friedmann and Hudson, 1974). He uses this definition by virtue of its universality of application, as it suggests it is human to plan, and therefore all indigenous peoples plan too. He explains that "the context might be different. The knowledge bases may differ. The institutions, decision process and approaches may vary. But planning... it nevertheless is" (Matunga, 2006, p. 28). He argues that planning by indigenous peoples needs to be reconceptualised as such, and should be recognised as a legitimate planning tradition. Māori have a strong tradition of resource management, which predates colonisation. In response to colonisation, Māori resource planning and management practices which are grounded in Māori tradition and philosophies have evolved and been reshaped to form a contemporary Māori resource management practice (Matunga, 2006, p. 26).

Māori relationships with the environment stem from a worldview which considers the environment as an interacting network of related elements, "each having a relationship to others and to earlier common origins" (Durie, 1998, p. 21). All things, including natural resources, possess mauri, which can be understood as a life essence. Durie explains that "damage to a resource not only creates physical impairment but also causes spiritual damage and in the process impinges on the mauri of other objects, including people" (Durie, 1998, p. 23). The protection of mauri is one of the principal issues for resource management. Tipa and Tierney (Tipa and Tierney, 2003) use freshwater management as an example to discuss the importance of mauri in resource management. They explain that the integrity of the waterways is essential to both their survival and cultural identity, so therefore, maintaining a water body with healthy mauri is crucial, as it sustains ecosystems, supports cultural practices (including the gathering of mahinga kai) and strengthens the cultural identity of the people (Tipa and Tierney, 2003, p. 7-9). In this sense, water bodies are much more than just a source of water. The cultural resources and practices which are intertwined with water, sustain the individual and their whanau, hapū, and iwi identity and well-being (Panelli and Tipa, 2007).

Māori have a strong ethic about the need to safeguard and manage natural resources for future generations. It is driven by imperatives that include whakapapa, tikanga, kaitiakitanga and tribal expectations (Jollands and Harmsworth, 2007, p. 720). Kaitiakitanga is one of the fundamental expressions of the Māori worldview:

> Kaitiaki is a big word. It encompasses atua, tapu, mana. It involves whakapapa and tika; to know kaitiaki is to know the Māori world. Everybody on this planet has a role to play as a guardian. But if you use the word kaitiaki, that person must be Māori because of the depth and meaning of the word, and the responsibility that go with it. The reason is that to be a kaitiaki means looking after one's own blood and bones literally. One's whanaunga and tupuna include the plants and animals, rocks and trees. We are all descended from Papatuanuku; she is our kaitiaki and we are in turn hers.
>
> (Roberts *et al.*, 1995, p. 9)

Fulfilling the responsibility of active kaitiakitanga is a driving force behind Māori aspirations for greater decision-making roles in resource management (Morris, 2009). Resource management practices in New Zealand need to recognise the inherited responsibility of Māori "to maintain the mana of lands and waters of their tribal lands, and to achieve this overriding imperative by respecting those who have passed before and considering those who will follow" (Panelli and Tipa, 2007, p. 547). The stewardship of these resources that are: sustained by tribal lands and waters contribute to the physical well-being of those reliant on the resources... tribal lands also nourish a sense of continuity between generations, reinforcing spiritual well-being in the form of whakapapa, sacred maunga, and ancestral rivers. (Panelli and Tipa, 2007, p. 456)

Kaitiakitanga is a responsibility to both the past and the future, and it must be recognised that the ownership of the resource is not necessarily important, as even if a resource passes out of tribal ownership, the tāngata whenua are not released from exercising their role of kaitiaki (Durie, 1998, p. 23).

It must be noted at this point, that there is no universal shared Māori perspective or experience. Iwi, hapū, whanau and individuals are influenced by a vast and complex range of cultural beliefs and values, a history of colonisation and dispossession of lands, and the experience of negotiating a world that is primarily based on non-Māori practices and values. As Durie emphasises, there are diverse Māori realities (Durie, 1998), and what is described here must be understood as such.

4.3 Māori Participation in Resource Management

Māori rights to participate in resource management are enshrined in the Treaty of Waitangi. As Hirini Matunga explains, the Treaty:

> still provides New Zealand with the clearest articulation of how a partnership between indigenous peoples and exogenous -"settler"- communities in governance, planning and development might actually have worked. The Treaty recognised a causal nexus between Māori people, their culture and traditions with their ancestral lands and other resources. It also acknowledged an explicit (or implicit) right to participate in management and planning decisions about these resources.
>
> (Matunga, 2006, p. 24)

This recognition of a partnership between Māori and the Crown implies that this extends to planning and managing the land which was covered by the Treaty. Further to the guarantees of the Treaty, there are many other reasons why Māori should have an active role in the management of natural resources. As Jollands and Harmsworth iterate, "iwi and hapū... are significant owners of natural resources (eg. through settlement of Treaty claims) and articulate a unique cultural-historical connection with the natural environment" (Jollands and Harmsworth, 2007, p. 717). This cultural-historical connection is a strong component of Māori identity, and is expressed through the relationship Māori have with the land. The land is much more than just a physical entity; it is embodied with the tāngata whenua, making land and people one and the same. Tipa and Panelli describe this connection as an entwinement of "biophysical land and cultural identity with mental and spiritual dimensions of life such that tribal land is an extension of a sense of self and collective cultural being" (Panelli and Tipa, 2009, p. 452). The expression of kaitiaki is one aspect of this, and an important part of sustaining cultural well-being.

In addition to cultural and political reasons for the involvement of Māori in resource management, there is another supporting strand of reasoning which falls under the rhetoric of human rights and development. Gibbs (2005) expands on the 'right to development,' which is internationally recognised as an:

> inalienable right of all human beings and peoples to participate in, contribute to, and enjoy economic, social, cultural, and political development, in which all human rights and fundamental freedoms can be fully recognised.
>
> (United Nations, 1986, article 1)

Māori assert that their right to development in New Zealand is protected under the Treaty of Waitangi (Gibbs, 2005). For Māori,

> ... the recognition of their rights to traditional lands and resources (on an equitable basis taking into account the needs of all inhabitants) is crucial to achieving equal opportunity and for their development as *indigenous peoples*. Without an economic or resource base, these groups will become further alienated from ongoing developments.
>
> (Gibbs, 2005, p. 1367; author's own emphasis)

The Waitangi Tribunal supports this and has made recommendations to the Crown that it ensures "that its Treaty partner is able to partake fully in that process [development]" (Waitangi Tribunal, 1998a, p. 129), which may include the priority for Māori development of traditional resources (Gibbs, 2005). Gibbs also notes that the New Zealand jurisprudence has evolved with the growing knowledge of the right to development, especially as Māori have increasingly asserted rights to the natural resources taken from them as a result of colonisation processes. Māori are seeking to ensure that those natural resources that are no longer in Māori ownership or control, are not developed without their input into decision-making and without at least some of the benefits of development being experienced by Māori communities. Gibbs concludes that it is not enough that Māori have their rights met as individuals, but also as a collective who are able to develop in accordance with their traditional practices. The state has a duty to ensure that this is able to happen (Gibbs, 2005, p. 1375).

4.4 Co-Management and Indigenous Peoples

There have been growing concerns over the past two decades about the nature and scale of resource use, with the realisation that our ability to solve environmental problems is not keeping pace with the growing size and complexities of the problems (Berkes *et al.*, 2003). As a way to confront this, it has become evident that the knowledge of all groups in society must be harnessed, if resource management practice is to ensure sustainability, and that local-level practices must be developed to deal with the problems at their location. Indigenous people have an important role in resource management as their knowledge and practices have developed out of a long and intimate relationship with the land and resources. As Tipa and Welch suggest,

> ... environmental problems cannot be ignored indefinitely, locally based strategies involving collaborative management offer an effective way to address them, and indigenous knowledge is potentially crucial to the effectiveness of such local strategies.
>
> (Tipa and Welch, 2006, p. 381)

Co-management of resources is seen as one way of including local and indigenous knowledge and ensuring that those with invested interests in the wellbeing of the resource and its management are participating in its care. Co-management has been looked upon so favourably for the simple reason that it is a "logical approach to solving resource management problems by partnership" (Carlsson and Berkes, 2005, p. 71). Partnership is often necessary as many resources are too complex to be managed by a single agency. As Carlsson and Berkes explain:

> Local users alone can hardly manage most natural resources in the complex contemporary world. At the same time, we have overwhelming evidence that centralized management of local resources is problematic. Even very centralized systems are dependent on the local level, for example, for the knowledge and skills of local users. Since many resource management systems are cross-scale, different management problems must be solved simultaneously at different levels.
>
> (Carlsson and Berkes, 2005, p. 71)

To do so, it is apparent that there must be some kind of allocation of tasks and responsibilities. The last decade in particular, has seen various forms of co-management emerge to achieve sustainable management of resources.

"Co-management connotes a collaborative institutional arrangement among diverse stakeholders for managing or using a natural resource" which are used worldwide to manage common property resources (Castro and Nielsen, 2001, p. 230). In general, co-management occurs where state agencies share resource allocation and/or management responsibilities with other parties, such as the local community, indigenous groups, non-governmental organisations (NGOs) and corporations. Co-management researchers emphasise, however, that there is no singular definition of co-management as they all vary according to circumstance, and it remains a contested concept. (Berkes, 2009; Berkes *et al.*, 2000, 1991; Tipa and Welch, 2006)

Berkes has written extensively on indigenous participation in co-management and has developed a typology of its different forms, ranging from 'consultation' at the lower end to 'partnership' at the upper end (Berkes *et al.*, 1991; Berkes, 1994). This spectrum of co-management is based on Arnstein's ladder of citizen participation (Arnstein, 1969), as there are a wide range of degrees of participation found in co-management agreements. These different categories include a mix of processes (eg. communication and consultation), structures (eg. advisory committees and management boards) and outcomes (eg. partnerships and community control). Although Berkes' typology has the greatest detail of those proposed to date and attempts to adequately portray the complete range of activities described as co-management, it has been criticised for creating categories that can be difficult to differentiate between (Tipa and Welch, 2006, p.378). As Borrini-Feyerabend (1996) points out, it is common that co-management agreements include parts from a range of the seven categories, rather than slotting neatly into one.

More recently, Berkes (2009) has provided an overview of the evolution of co-management which has over the past twenty years taken many different forms. He examines a number of facets of co-management, amongst which he highlights power sharing, institution building, trust and social capital, process, problem solving and governance. He turns from attempting to categorise types of co-management, to examining the outcomes of these approaches and what they offer to both the state and indigenous people. Some of the challenges raised here by Berkes are addressed in greater detail in the following chapter.

4.5 Co-Management in Aotearoa

There has been a growing interest in the potential of co-management relationships for Aotearoa, in which tāngata whenua share decision-making powers with government agencies to manage natural resources (Prystupa, 1998; Taiepa *et al.*, 2000; Berke *et al.*, 2002; Tipa and Welch, 2006; Tipa, 2006; Yandle, 2008). As collaboration between Māori and Pākehā is a "fundamental constitutional requirement of the Treaty of the Waitangi," the co-management of natural resources is one way to address this obligation (Taiepa *et al.*, 2000, p. 156). The dramatic changes to the planning and resource management paradigm, as a result of the RMLR process have challenged local government, as well as with the stakeholders they seek to engage, to consider the value of co-management in managing lands and resources that are of significance to Māori.

Tipa and Welch (2006) believe that state collaboration with Māori will make the most of the input of Māori into resource management decision-making. Their work, looking at the potential for co-management of freshwater resources in Aotearoa, takes an indigenous perspective of what outcomes are sought from co-management arrangements. Māori look to ensure that cultural identity is preserved; mātauranga is used in the management practice; and their rights to access, use, develop and protect resources are recognised (Tipa and Welch, 2006, p. 388). Ideally, an agreement should be legally binding on each party and should be balanced to ensure that governance structures are able to facilitate the successful interaction of partners but still maintains the right for partners to advocate for those who they represent. They state that from an indigenous perspective, "information sharing partnerships must involve empowerment, equal participation, and ultimately, the real recognition of indigenous status," and the way agreements are negotiated will be determined on an individual case basis (Tipa and Welch, 2006, p. 390).

Tipa and Welch (2006) defined four categories of co-management agreements that they found in operation in New Zealand. These are 'dual management,' 'co-operative management,' 'collaborative management,' and 'community-based management.' These categories are derived from the findings of case studies taken from the Māori experience of engaging in co-management agreements and Tipa's own personal experience in this field. The first category, dual management, is described as a form of dual arrangement between government and citizens, where the ownership of resources is vested in the state and use is by the people as a right, but neither party has the ultimate responsibility for the resource. The second, co-operative management, is a management approach which accepts input from the community as being a meaningful contribution to the process. The third, collaborative management, sets out an arrangement in which partners share management functions, rights and responsibilities to manage a territory and/or resource. The final category is community management, which involves the devolution of power to the community itself so that they are managing the natural resource themselves. Out of these four modes of co-management, Tipa believes that Māori would be best served by collaborative management approaches, as these provide for active participation in decision-making, yet provide for the support of resourcing and capacity building from the state (Tipa, 2006, p. 160).

Taiepa *et al.* (2000) examined co-management agreements that had been established under the Conservation Act 1987, under Section 4 which requires that the Department of Conservation "give effect to the Treaty of Waitangi." They found that there had been very few formal arrangements to co-manage conservation lands, but:

> DoC has developed organizational mechanisms to facilitate informal partnerships... but nine years after its inception has embraced few formal co-management arrangements with iwi wherein Māori are given an equal or predominant share in decision-making.
>
> (Taiepa *et al.*, 2000, p. 239)

An assessment of the lack of co-management agreements revealed a number of obstacles that prevented Māori involvement in equitable conservation decision-making roles. These included oppositional philosophical standpoints (preservation versus conservation for future use), institutional inertia, a paucity of co-management models to gauge success against, a lack of resources to promote and support these arrangements, and challenges from predominantly Euro-centric non-governmental organisations (in both operation and membership). The biggest challenge to overcome is described as the "fundamental reluctance of some to share power with Māori" (Taiepa *et al.*, 2000, p. 236).

Evidence from the New Zealand experience highlights the fact that having enabling legislation alone is unlikely to prompt co-management arrangements with Māori. Taiepa *et al.* (2000) believe that the active facilitation of middle-level agreements, with the additional push from the creation of new administrative structures that are designed to govern the co-management of a broad range of resource issues, will help bring more agreements into existence. Co-management agreements may also be initiated from the grassroots level, driven from a single or location-specific issue. They conclude that effective models for co-management will be characterised by a strong emphasis on the issues of equity and power-sharing.

Local Government New Zealand conducted a survey of co-management agreements in New Zealand, selecting five case studies around the country on the basis of their differing structures and scope (LGNZ, 2007). The purpose of this exercise was to promote and assist in the development of further case management agreements. From the case studies they drew a number of observations from which they identified the most important elements of a successful co-management agreement. These included the acknowledgement of the iwi history and circumstances; common goals and objectives; strong leadership; and the importance of planning (LGNZ, 2007, p. 5). Local Government New Zealand encourages co-management approaches as it considers the outcomes to be of benefit to both parties. Whilst meeting their obligations to encourage participation and involvement in the decision-making provisions of the RMA and Local Government Act 2002, councils gain better understanding of tāngata whenua, are introduced to alternative viewpoints and practices, and are able to build a work-

ing relationship with iwi. Iwi are likewise able to build a relationship with council, and are also able to regain or restore mana, and fulfil their responsibilities as kaitiakitanga (LGNZ, 2007, p. 17).

The Waitangi Tribunal is also a proponent of co-management in New Zealand. It has made recommendations that co-management agreements are established in both historical and contemporary inquiries (Morris, 2009). In the 1999 *Whanganui River Report*, the Tribunal recommended that the Crown established a co-management approach for the river with iwi (Waitangi Tribunal, 1999b).[1] The report made note that under the RMA at that time, the transferring of power "discretionary and limited in scope... [there is] no process within the Act that does not leave ultimate power and control in the hands of a regional or territorial authority" (Waitangi Tribunal, 1999b, p. 342-343). This comment still stands as there have been no substantial changes to the RMA provisions for Māori since this time. A collaborative approach was recommended as the Tribunal saw that the experience of local authorities in management would be crucial in navigating the complexities of the modern world. The Tribunal is encouraging co-management approaches which fall outside of the provisions in the RMA as it believes that there is insufficient impetus and scope within its co-management mechanisms to do justice to the potential of these collaborative agreements. The Waitangi Tribunal has also made a number of other recommendations for a co-management approach, including the *Te Whanganui-a-Orotu Report on Remedies 1995*,[2] the *Turangi Township Remedies Report 1998*[3], the *Radio Spectrum Management and Development Final Report 1999*,[4] and the *Report on the Crown's Foreshore and Seabed Policy 2004*[5].

Recently, the Crown has signed a co-management agreement with Waikato-Tainui which covers the Waikato River Catchment. This agreement provides iwi with the mechanisms to govern and management the river in partnership with central and local government. This is a result of a Treaty settlement deed signed in 2008, which has established a single co-governance entity, known as the Waikato River Authority. The Authority is made up of equal numbers of Crown and iwi appointed members. Other iwi with interests along the river

[1]The report refers to a 'collaboration' on page 343; and 'joint' on page 347 ("the crown should create a body jointly with Atihaunui...").

[2]The Tribunal recommended that "a new joint management regime be developed" to manage the Ahuriri Estuary between the hapū authority and DoC (Waitangi Tribunal, 1995, p. 24 - 25).

[3]DoC was encouraged to return lands to iwi ownership "and/or establish joint management arrangements that recognised the mana and the rangatiratanga of Ngāti Turangitukua" (Waitangi Tribunal, 1998b, p. 104)

[4]The Tribunal advocated "joint-partnership operations" to facilitate Māori participation in the telecommunications industry. (Waitangi Tribunal, 1999a, p. 53)

[5]The Tribunal suggested the use of a legal mechanism "whereby land under hapū title is subject to a regime of management involving the Crown and hapū" (Waitangi Tribunal, 2004, p. 143)

are also included on the Board. The co-management agreement is still in its initial stages and is being closely watched to see how it proceeds.

4.6 Conclusion

It is widely acknowledged that Māori have much to offer contemporary resource management practice, and there is a movement to ensure that their rights to participate in resource management, as guaranteed by the Treaty of Waitangi, are recognised. Co-management has been touted as a way to do this; however, such agreements remain largely aspirational in New Zealand, even though there is evidence of state support for their use.

Having overviewed the role of Māori in resource management and the potential of co-management agreements to enable their effective participation, I turn now to planning and institutional theory to frame how these play out in New Zealand. The following chapter provides theoretical perspectives on participatory planning and the crafting of mechanisms to enable indigenous participation in the planning and implementation of collaborative resource management techniques.

Chapter 5

Theoretical Perspectives on Institutional Design

5.1 Introduction

Equitable and efficient natural resource management systems rely heavily on the creation of effective institutional arrangements (Hillman and Howitt, 2008). Major changes to resource management structures are usually accompanied by the establishment of new management agencies, new forms of participation and new decision-making formats. As Agyeman and Evans (2004) state, the transition phase between different systems is central to maintaining and ultimately enhancing institutional capacity to meet the goals of environmental sustainability and social justice. It is well known that reforms should be systemic to be successful, but it is widely acknowledged that the shift to a new regime is often uncertain and patchy in implementation. The transition phase between the established approach and the newly developed alternative is "frequently a blend of hope, expectation, frustration, inertia, misunderstanding and resistance" (Hillman and Howitt, 2008, p. 56). The implementation of a new resource management system combines a concurrent drive for the application of new social and economic goals, with new methods and management arrangements both of which pose a challenge to institutional capacity.

Formal processes of environmental management and the institutional framework in which they are located, have generally failed to understand, respect and accommodate indigenous interests in land and resource management (Howitt, 2001). This chapter explores some of the theoretical perspectives which have developed around the creation of institutions

for collaborative resource management, drawing from planning, development studies, sociology and institutional disciplines. Having given an outline of these perspectives, I then turn to a closer examination of institutional bricolage, which is a framework that considers the influences which shape the design and implementation of resource management mechanisms.

5.2 Planning Theory

From some perspectives, planning can be seen as a theoretical framework, which can enable or create a barrier to linking resource management, indigenous rights and governance. Planning is one of the strongest methods of negotiating and resolving conflicts about resources between indigenous and non-indigenous groups (Hibbard and Lane, 2004). One of its key strengths is that planning facilitates the development of indigenous communities' autonomy and their ability to regain and manage their custodial lands and resources. As Friedmann points out, planning offers an indispensable conceptual and operational lens through which to gain "a *critical understanding* of (indigenous sovereignty) issues ... and a *suitable means* for translating knowledge into action" (Friedmann, 2002, p. 151; emphasis in original). It is therefore an opportunity for indigenous people to implement traditional resource management practices within the limits established by the state.

Planning theory has followed the institutionalist debates taken up in sociology, economics and political science, where much attention has been focused on institutions. In this sense, 'institution' means more than the nature and practices of an organisation of people and processes - formal institutions include things like norms and rules, and informal institutions encompass values, conventions and codes of behaviour (Buitelaar *et al.*, 2007, p. 891). Accordingly, institutional change has been at the forefront of planning theory debates since the early 1990s (Gualini, 2002; Healey, 1998; Innes, 1995, see for example). Innes (1995) suggests that the very essence of planning lies in institutional design. The literature in this area has generally focussed on finding ways in which "agents can unfold their creative practices to adapt to changes, within collaborative processes, in order to break through the institutional pathways and their structural force" (Buitelaar *et al.*, 2007, p. 891).

5.3 Institutional Theory

Institutional theory attempts to answer the question of how a state develops the appropriate forms of governance and mechanisms which deliver equitably to both its indigenous and non-indigenous citizens. Ostrom's (1990) design principles for robust and enduring institutions to manage common property resource management, despite her insistence that they are not suitable for universal application and are rather to be seen as guiding principles, have provided the foundations for a range of work in this field. Cleaver and Franks (2005, p. 2) sum up the characteristics of the literature that has emerged out of Ostrom's work, as placing emphasis on the formalisation of institutional arrangements which feature codified rules and regulations overseen by designated authority structures. Transparency of governance structures and their processes is seen as essential, as well as the principle of representation of users and the creation of 'internally efficient' mechanisms for the allocation of resources and the resolution of conflict. These approaches tend towards the assumption that it is possible to craft new institutions through careful and considerate design. Ostrom's belief that institutions could be 'crafted' through formalisation to better suit the tasks of natural resource management has been refuted by a number of critics, who believe there are much greater complexities involved in institutional crafting than she acknowledged (Cleaver, 2002; Buitelaar *et al.*, 2007; Di Domenico *et al.*, 2010).

Mainstream institutionalism, as epitomised by Ostrom's work, has been accused of over-simplifying the design of mechanisms for resource management through paying little heed to the historical and social context. These models also demonstrate the extent of 'path dependency,' whereby the "historical experiences and policy legacies frame present actions: behaviour or identities that once proved successful and that are established, will be used again to meet new challenges" (Sehring, 2009, p. 64). This creates feedback mechanisms which reflect and further reinforce the logic of the institution (Thelen, 1999). Evidence suggests, however, that the processes of institutional development and evolution are much more complex and fluid (Buitelaar *et al.*, 2007; Hillman and Howitt, 2008). They change according to need, political intervention and season, and there is *ad hoc* application of different institutional functions (Cleaver, 1999, p. 602).

Linder and Peters (1995) offer an alternative view of institutional design, where it takes the form of "tireless tinkering." They see this as composed of two separate strands; firstly, a decision strand, which emphasises the production of solutions for problems, and secondly, a dialogue-based approach, which emphasises the socially embedded process of institutionalisation. This reinforces the importance of flexibility and adaption according to

need, and recognises that social processes are often more adept at catering for change.

The design of institutions has been conceived in two main strands, which are the deliberate construction of institutions, and the evolution of institutions which emerge over time as a result of adaptation to changing circumstances and appropriateness of the mechanisms (Buitelaar *et al.*, 2007; Sehring, 2009). Resource management institutions are subject to both design and evolution, and successful mechanisms are often the result of a combination of the two. Buitelaar et al. (Buitelaar *et al.*, 2007) suggest that it is time to move on from this dominant dichotomous perspective which juxtaposes 'institutional design' with 'institutional evolution.' They propose a more encompassing approach which recognises that institutions result from both intentional design and evolution. This idea will be revisited after introducing a number of other concepts around transitions and adaptation.

5.4 Adaptation to New Resource Management Regimes

To enable a relatively smooth transition from an old resource management regime to a new one, institutions need to be flexible, adaptive and resilient (Jacobs and Mulvihill, 1995). The transition period must adequately meet the needs of the "new scientific methods, new social and economic goals and new management arrangements and practices," and doing so effectively is one of the greatest challenges to institutional capacity (Hillman and Howitt, 2008, p. 56).

O'Neill and McGuirk draw attention to the fact that during the implementation of new resource management regimes, the institutional structures and the power relationships bedded within them, can quickly become invisible as part of everyday life, as practices that 'just happen' (2005, p. 289). The process of normalisation of these practices can be rapid, and may cover a loss of capacity and create the potential for injustice. Hillman and Howitt state that from a justice perspective, this entails a risk that limiting the "discourse of reform to a single frame of reference – a preferred spatial or temporal scale or a single context for defining outcomes and processes – excludes or marginalises other perspectives on environmental decision-making and its consequences" (Hillman and Howitt, 2008, p. 56).

Examining the transition phase between resource management regimes can offer an insight into the capacity of institutional arrangements to suitably reflect social and biophysical diversity (Howitt, 2001). As Natcher *et al.* (2005) point out, it is in this transition phase that the institutional foundations for justice (and injustice) can be laid for years. Change at

an institutional level should therefore be examined in terms of its promotion or restriction of a wide range of scales and interests, the inclusion of multiple knowledges and discourses, and the balance of power sharing between government and other agents. Understanding the changes to formal regulatory structures is fairly straightforward, but it is important to also take note of informal processes, practices, networks, cultures and values that guide the formal structure, but are not as immediately apparent (Connick and Innes, 2003). It is these informal processes that ultimately shape the success of the transition between resource management regimes.

The dramatic changes to New Zealand's planning and resource management paradigm, as a result of the Resource Management Law Reform process, have inevitably challenged local government, as well as with the stakeholders they seek to engage with to achieve sustain able management of natural resources. Following the introduction of the Resource Management Act and its provisions for Māori, there have been numerous reports that there were difficulties in its implementation. As suggested in Chapter Three, these have included suggestions that councils are struggling to understand their responsibilities to tāngata whenua, that iwi have been excluded from consultation processes (PCE, 1998), and that representation of Māori in local government has been inadequate (de Bres, 2010). Reports on the use of collaborative mechanisms for resource management have also concluded that there are substantial barriers to overcome before they are widely used (Rennie *et al.*, 2000; Hayward, 2003; Coates, 2009).

It can hardly be expected that local authorities, let alone central government, would be able to adjust swiftly and adequately to new legislation which requires a high degree of cultural understanding without significant amounts of education. Pathways to effective communication and relationship building between two or more groups which operate in completely different manners with vastly differing worldviews need to be found and explored. This is possibly even more difficult to achieve because there is no one-size-fits-all approach - Māori identify primarily with iwi/hapū and their corresponding rohe, rather than as a universal Māori identity. It does make sense, at a certain level, to tie these relationships at a regional level, after all it is at the geographical scale at which both tāngata whenua, and regional and district councils operate (Hayward, 2003). However, rohe boundaries do not match those of local authorities, and often iwi have to negotiate with a number of councils, and vice versa. Without comprehensive, timely and effective leadership and direction from central government which demonstrates what is expected in terms of these relationships and the level of interaction required to successfully accomplish what is set out in the RMA, the path to successful collaboration with tāngata whenua is fraught with difficulty (PCE, 1998).

Critically, institutional barriers in the design of processes and mechanisms for resource management are identified as frequently leading to more operational level issues (Lachapelle *et al.*, 2003). As Acheson suggests, there is no universal solution to resource management (2006, p. 128) and it is particularly important to recognise in the case of Māori in New Zealand, that due to the tribal nature of the Māori culture, there will be as many solutions required as there are iwi and hapū.

The lack of usage of the two mechanisms designed for council co-management with tāngata whenua suggests that there has been some form of failure in the design of these mechanisms and/or institutional capacity to implement them adequately, if at all. Councils seeking to work alongside tāngata whenua use a variety of other arrangements, such as memorandums of understanding, to develop collaborative relationships. Co-management arrangements which sit outside the RMA (for example those between DoC and iwi), suggest that there is the potential for successful collaboration between Māori and other interest groups. If this is the case, then why are transfers of power and joint management agreements not being utilised? The existence but lack of application of these institutionally crafted mechanisms raises a number of questions about their design, and the transition period between the old legislation and the RMA. It is here that the concept of institutional bricolage offers some assistance in clarifying the process of institution-building.

5.5 Institutional Bricolage

It is clear that institutional design alone is often inadequate to create the tools to manage natural resources effectively. Cleaver (2002) questions the notion that mechanisms can in fact be designed to achieve optimum use of resources and successful collective action, with the intention of building social capital. She asserts that 'institutional crafting' in resource management is often founded on concepts that are "inadequately socially informed and which ill-reflect the complexity, diversity and *ad hoc* nature of institutional formation" (Cleaver, 2002, p. 11). Through the discussion of water and land resource issues in Africa, she turns to Claude Lévi Strauss' (1966) concept of the *bricoleur*, who borrows from around him to create something new, to better understand the complexities of the evolution of institutions for natural resource management and their socially-embedded nature (Cleaver, 2001, 2002). Lévi-Strauss' (1966) original concept of intellectual bricolage refers to the process of "making do with what is at hand." He used this metaphor as a way of contrasting two separate worldviews, that of the mythical and that of the scientific, as two distinct yet equal modes

of thought. The bricoleur "acquires, compiles, and stores materials for future use," and their awareness of how they will eventually use these materials remains unshaped in the early phases of resource acquisition, allowing flexibility for their use later, no matter for what purpose (Di Domenico *et al.*, 2010, p. 684).

Cleaver employs the term, 'institutional bricolage,' to refer to the manner in which "mechanisms for resource management and collective action are borrowed or constructed from existing institutions, styles of thinking and sanctioned social relationships" (2002, p. 16). The idea that effective and responsive institutions can be crafted through design processes is rejected. Instead, successful institutions are constructed through a process of bricolage whereby analogies and styles of thought from existing institutions and experiences are gathered and then used to form new ones. She describes this process as "the piecing together through conscious action and non-reflexive practice of institutional arrangements from existing norms, practices and relationships" (Cleaver, 2002, p. 229).

Cleaver illustrates three fundamental characteristics of institutional bricolage through a case study of natural resource management in Tanzania. Firstly, the bricoleurs possess complex identities and a wide range of norms; secondly, there is extensive cultural borrowing and adaptation of institutions to suit multiple purposes; and thirdly, there is a prevalence of common social principles which are able to foster both cooperation and conflict between different sets of stakeholders (Cleaver, 2002). In Tanzania, she found that people have multiple roles and borrow happily across cultural norms. For example, she discusses the formation of a *Sungusungu*, a cattle miltia, by a local community to protect their stock from theft. This idea was borrowed from traditional defence organisations, and over time became accountable to local government, whilst retaining its basis of socially embedded principles of reconciliation and conflict minimisation. The *Sungusungu* also became a larger part of the community's welfare provisions, as it can be called on for things such as the protection of sick herders and as a channel of community communication (Cleaver, 2002, p. 24). This shows how actors piece together social relations, existing structures, and cultural practices to deliberately create an institution that is embedded in the community and evolves over time as it gets added to and subtracted from according to need.

The way that institutional bricolage is presented by Cleaver, is not so much an explicitly conscious and rational process of institutional engineering, rather one which is more a form of "institutional do-it-yourself" (Cleaver, 2002, p. 229). Implied within this framing of bricolage is the "multiplicity of potential resources to draw on and a variability in the capacity of individuals to act as bricoleurs" (Cleaver, 2002, p. 229).

Sehring proposes that institutional bricolage provides an understanding of institutional change that is placed between path dependency and the development of alternative, new paths, which are never entirely new, but are a combination of existing institutional elements and new ideas (2009, p. 66). She applied this framework to water governance reforms in post-Soviet states, finding that path dependencies limited the effectiveness of the reforms, particularly as institutionalised Soviet and pre-Soviet behavioural patterns still shaped the actors' responses to new environmental management challenges. The notion of institutional bricolage was used to explain how stakeholders recombined elements of different institutional processes and social relationships to redefine their meanings to suit the context, which meant that the reforms were interpreted in a different fashion than desired and anticipated by their designers. This led her to suggest that such reforms could not succeed "without the sound sequencing of reforms, participation of stakeholders, renunciation of rigid adherence to blueprint models, and a long-term and comprehensive approach (Sehring, 2009, p. 78). Nonetheless, the process of institutional bricolage is unpredictable and it is difficult to foresee how resource management reforms play out in reality: "newly introduced arrangements will become revised, adapted and socially embedded over time, or abandoned and forgotten," (Cleaver, 2002, p. 29).

The concept of institutional bricolage also places an emphasis on the ebb and flow of institutions over time, and demonstrates the importance of understanding how processes of collective decision-making function. The combination of a highly contextualised focus with a wider perspective on the surrounding structural forces which shape institutional inclusion and exclusion, makes it apparent that no single factor is adequate to explain institutional success (Cleaver and Franks, 2005, p. 17). Instead, institutional processes are highly dynamic and result in very differing forms in different contexts, which ultimately means, that they elude design. Sehring (2009) suggests that bricolage occurs in two forms – intentional and unintentional – and that to create effective resource management mechanisms, greater awareness is required of the interplay between the two. Institutional bricolage can thus be considered an:

> ... approach to institutional change that is situated between path dependency and the development of new, alternative paths, which are never completely new but a recombination of existing institutional elements and concepts.
>
> (Sehring, 2009, p. 66)

5.6 Implications of Institutional Bricolage

Institutional bricolage suggests that in considering the mechanisms that the RMA offers for co-management with Māori, it is essential to look beyond their design, to consider the way in which they initially evolved through exposure to different social and cultural mores, and how co-management approaches have since evolved in response to specific contexts between specific groups of participants. As Hillman and Howitt state, the institutions that most effectively promote sustainability are those that look beyond:

> ... narrow discipline-bound knowledge, government sanctions and state power, but rather those that build on the repositories of knowledge accumulated from research and practical experience whilst responding and adapting to changing social, environmental and economic characteristics.
>
> (Hillman and Howitt, 2008, p. 65)

It is possible that the RMA mechanisms lacked the ability to achieve this level of responsiveness. It should also be recognised that local actors must seek appropriate forms of community engagement for their situations otherwise such recognition will ultimately prove to be short-term and superficial in nature. The processes through which institutions are constructed are crucial to securing institutional systems that deliver effective resource management.

5.7 Conclusion

Institutional development is often triggered by the instrumental wish of (collective) agents to 'get the institutions right' by attempting to strengthen their effectiveness, efficiency, resource base, and transparency, amongst other things. Yet, through the social, political, and technical reality in which such initiatives are taken, they quickly become twisted and entangled in complex webs of social interaction (Buitelaar *et al.*, 2007, p. 895).

The full and effective involvement of Māori in resource management is an important step towards achieving tino rangatiratanga. It is evident that there are many challenges to be met in addressing these issues, which are encountered within social processes and institutional forms. New Zealand is only just beginning to come to terms with the complexity of meeting the needs of both Māori and wider society in resource management. The RMA provides opportunities to foster formalised collaboration with tāngata whenua, yet these

mechanisms have not been widely utilised, suggesting that institutional crafting has been unsuccessful. The concept of institutional bricolage helps provide an understanding of why this may be and offers insight into the creation and functioning of successful resource management institutions. "The institutional infrastructures inherited from the past can and most often do present major barriers to progress" (Jacobs and Mulvihill, 1995, p. 13), and the lack of progress with the RMA's co-management provisions may relate to a lack of locally relevant bricolage in their design. The concept of institutional bricolage is used to discuss the findings of the survey and interviews in Chapter Nine.

Chapter 6

Methods

6.1 Introduction

The research sets out to examine the intentions behind the development of provisions for Māori to be involved with co-management within the Resource Management Act 1991 and the extent to which these provisions (or alternative arrangements) had been utilised by councils.

The specific research questions are:

Question One:

What were the intentions behind the inclusion of Section 33 transfers of power and Sections 36B-E joint management agreements?

Question Two:

To what extent have these provisions been implemented?

Question Three:

What barriers are limiting the uptake of the provisions?

Question Four:

How have the provisions been used in practice?

Question Five:

How does the concept of institutional bricolage explain the creation of the provisions and how their uses have subsequently been negotiated by iwi and councils?

Interviews with key informants involved in the law reform are used to address the first question. The survey with the council provides insight into the second question by quantifying the uptake of the provisions and contributes to the third question, identifying the barriers which are limiting their use, which are also informed by the interview responses. Survey responses help to provide an emic perspective to answer the fourth and fifth questions about the way in which the provisions have been used and negotiated by councils and iwi. The last two questions are also addressed in the interviews, with the informants providing etic perspectives on the councils' relationships with iwi. Relevant literature is used where appropriate to supplement findings from the survey and interviews. These methods will be described in the latter part of the chapter; first, however, the research context will be discussed.

6.2 Framing the Research

As part of a larger research project looking at what constitutes effective participation by Māori in resource management planning, this work sits firmly within a cross-cultural research framework. Although this research is not undertaken specifically within te Ao Māori (the Māori world), it is heavily influenced by the principles of a kaupapa Māori approach. Underlying the research is a desire for genuine collaboration between Māori and Pākehā, and an effort to appropriately enact the spirit of Te Tiriti o Waitangi/the Treaty of Waitangi. The manner in which the research has been conducted is an attempt to respectfully bridge the space between these two worlds. In exploring the intentions behind the RMA's co-management mechanisms, it engenders reflection on the state of current Māori and government interactions, particularly around the recognition of tino rangatiratanga.

This particular piece of research sits in a little acknowledged position whereby the research ultimately seeks to benefit indigenous communities within New Zealand, but all of the research is conducted within a Western/Pākehā environment. The informants have all been, and many still are, in a position of political or policy leadership in government or iwi. There is limited guidance within the literature as to how to frame such research, although there is considerably more on conducting research within an indigenous context.

6.3 Cross-Cultural Research Context

Research has often done indigenous communities a great disservice. The word 'research' is "probably one of the dirtiest words in the indigenous world's vocabulary" (Smith, 1999, p.1). Linda Tuhiwai Smith, a Māori scholar, writes passionately on the subject of research and the indigenous. Her seminal work, "*Decolonising Methodologies*" is considered a foundation text for indigenous peoples seeking to reclaim the research process, as for too long it has been wielded in a damaging and disrespectful manner by many research practitioners.

> When mentioned in many indigenous contexts, it [research] stirs up silence, it conjures up bad memories, it raises a smile that is knowing and distrustful. It is so powerful that indigenous people even write poetry about research. The ways in which scientific research is implicated in the worst excesses of colonialism remains a powerful remembered history for many of the world's colonised peoples. It is a history that still offends the deepest sense of our humanity.
>
> (Smith, 1999, p. 1)

Smith's work has been supported by a surge of offerings from indigenous scholars from all around the world. Many of these scholars note the discomfort of being 'under the microscope' and a severe sense of distrusting of the researchers' motives. As a result, these scholars have begun developing and enacting their own indigenous methodologies which seek to take control of the research process and to ensure that the outcomes benefit their own communities.

Academic discussion of the role of cross-cultural collaborative research has been relatively more muted in contrast to that surrounding indigenist approaches to research practice. Nonetheless, as the debate matures, it is becoming more apparent that as the current situation stands, indigenous research for indigenous peoples must be complemented with work by non-indigenous researchers looking to create a more collaborative and supportive environment for the aspirations of indigenous communities. Proof that this is beginning to happen is evident in the recent publication of an entire issue of the *Journal of the Royal Society of New Zealand* (2009, (39)4) devoted to the debate of cross-cultural environmental research and management. The call for contributions resulted in a flood of articles, discussing a huge variety of cross-cultural partnerships from both within Aotearoa New Zealand and from places as wide spread as Kenya, the Cook Islands, Canada and Mexico.

The importance of cross-cultural collaboration in Aotearoa New Zealand is well established due to the ethnic make-up of our population. Māori population will continue to grow, with Durie (2003, p. 42) stating that "by 2051 the ethnic Māori population will almost double in size to a million, or twenty-two per cent of the total New Zealand." Although the percentage of Māori will become a more significant proportion in the future, Dr Ranginui Walker's argument for cross-cultural collaboration still resonates twenty years later:

> The Māori, as a minority of 12 per cent of the population of three million, cannot achieve justice or resolve their grievances without Pākehā support. For this reason, Pākehā are as much a part of the process of social transformation in the postcolonial era as radical and activist Māori.
>
> (Walker, 1990, p. 234)

Dr Walker would be glad to see the recent groundswell in the number of collaborative research efforts undertaken by Māori and Pākehā, with this surge starting to become well-documented within the literature (Pope, 2008). Even more heartening is that many of these collaborations are guided by kaupapa Māori principles, meaning that Māori are directing the research process upholding tikanga and ensuring the research meets the needs of Māori communities.

6.4 Kaupapa Māori Research

Kaupapa Māori research is considered to be research that "Māori maintain conceptual, design, methodological and interpretative control" over; simply summed up as "research by Māori, for Māori with Māori'" (Jahnke and Taiapa, 1999, p. 45). As this methodology has evolved over time, there has been development towards a more inclusive "Māori research by Māori, for Māori with the help of invited others" (Bishop, 2005, p. 113). This creation of a space for non-Māori working alongside Māori-directed research has seen a proliferation of bi-cultural collaborations where kaupapa Māori approaches are employed, either solely or in conjunction with Western investigative techniques (Stephenson and Moller, 2009; Carpenter and McMurchy-Pilkington, 2008; Edwards *et al.*, 2005).

There are many reasons why kaupapa Māori research approaches should be used, not least the importance of reclaiming the research process for indigenous peoples, but as Edwards et al. state, "It goes further to provide possibilities for creativity and innovation within a framework that is responsive, reflective and accountable" (Edwards *et al.*, 2005, p. 89).

Pope (2008, p. 63) describes kaupapa Māori research as not being "a particular method requiring particular strategies. Rather, it is a wider philosophy of what research means which in turn drives how it should be approached."

Guidelines to conducting research using a kaupapa Māori approach have been developed by a number of Māori researchers over the past few decades and are now firmly established within Māori-led research initiatives. Cramm (2001) and Smith (1999) outline the underlying principles which guide such an approach. They are as follows: *aroha ki te tāngata* (respect the people); *kanohi ki te kanohi* (face to face); *titiro, whakarongo... kōrero* (look, listen, then speak); *kaua e takahia te mana o te tāngata* (do not trample over the mana of the people); *kia tūpato* (be cautious); *kaua e māhaki* (do not flaunt your knowledge). These guidelines are only secondary to what most see as the key pillars of kaupapa Māori research: firstly, that research is conducted by Māori, for Māori, using Māori cultural perspectives; secondly, that it is used as a strategy for the empowerment and tino rangatiratanga of Māori; and thirdly, that research produces beneficial outcomes for Māori (Walker *et al.*, 2006).

As a Pākehā academic, Pope acknowledges that whilst academic circles have begun to acknowledge the kaupapa Māori philosophy, it is up to people such as himself to truly open up to the notion of a flourishing research partnership in Aotearoa New Zealand. To achieve such a goal, it is both desirable and essential that researchers are able to experience kaupapa Māori and/or self-determination first-hand in relation to the research process (Pope, 2008, p. 64). There are now a small number of texts which describe the experience of Pākehā researchers working within a kaupapa Māori framework, all of which stress the importance of humility, *he kanohi kitea* (face-to-face interaction) and relationship building in effective models of cross-cultural partnerships (Carpenter and McMurchy-Pilkington, 2008; Pope, 2008; Sexton, 2008).

Sexton (2008) discusses his use of this kaupapa as a non-Māori working with Māori in the education sector. His experiences suggest that this framework requires a degree of flexibility and willingness to reconsider the research design at all stages of the process. Sexton's application of these principles shows that the transference of this kaupapa to a non-Māori world can work remarkably well, as there are many commonalities in the ethical and respectful interaction with research informants shared by both perspectives.

6.5 Tirohia he Huarahi Research Programme

As noted in Chapter One, the research undertaken in this thesis contributes to a three year bi-cultural research programme, *Tirohia he Huarahi*, and is based at the Centre for the Study of Agriculture, Food and the Environment (CSAFE) at the University of Otago. Their work will look at the barriers to, and the benefits that could arise from, the active participation of tāngata whenua in the management of resources, particularly that of mahinga kai. The basic premise underlying the research programme is that traditional Māori resource management, and its evolution, has much to offer national resource management practices. The second and third phases of the research will use in-depth case studies at an iwi and hāpu level to target the experience of Māori negotiating resource management, seeking to find what constitutes effective participation by Māori in resource management planning from a variety of different perspectives. The findings from my research will help inform the second and third stages of the programme through the provision of the historical context of the creation of the Resource Management Act and the way in which Māori participation in resource management planning was envisaged at this time. This will permit comparison between the intentions of the Act and how the policy has actually played out over time.

6.6 Approach Selected for Research

Bearing in mind that this research is part of a larger project, governed by a strong commitment to Māori-led research for Māori, it has been imperative that this particular part of the research project closely aligns with the kaupapa of the larger team. It is therefore guided by an awareness of these issues and a desire to straddle the divide between Western research practices and a kaupapa Māori approach. I am guided here by Cramm (2001), who suggests that a non-Māori researcher cannot legitimately undertake a genuine kaupapa Māori approach, as they are unable to fully encompass the total 'Māoriness' required to inform the research process. Instead they can support kaupapa Māori approaches through a strong awareness and acknowledgement of those underlying principles and an openness and respect to such methods. The interview process, in particular, has been strongly guided by the principles of a kaupapa Māori approach, which has been an important consideration when interviewing informants who identify as Māori. This has been strongly supported by the guidance and support of the research team's whakaruruhau (mentor) who was present as a co-interviewer in the majority of the interviews conducted.

6.7 Te Tiriti o Aotearoa/The Treaty of Waitangi and Research Practice

The Treaty of Waitangi plays an important role in the ethics of research in Aotearoa New Zealand (Hudson and Russell, 2009). It is seen as a template for relationship building for researchers engaging with Māori communities. They suggest a slight revision to the principles of partnership, participation and protection to better meet the needs of Māori involved with research, and to ensure that research meets the needs of those communities involved. These revisions involve the recognition of parties as equals in the research, that the engagement is entered into with integrity, and that outcomes will be realised in an equitable manner.

Tolich and North (2002) describe a common problem that is encountered within postgraduate research in Aotearoa New Zealand which they call, "Pākehā paralysis." It is defined as being a state of caution and fear whereby Pākehā students deliberately exclude Māori from the research population samples as the only path to undertaking culturally aware and ethically responsible research. This, they suggest, is a direct result of the research culture developed and codified in Aotearoa New Zealand's universities and their ethics committees, which privileges Māori-led research for Māori. Whilst my particular case is not directly comparable to the issues discussed by Tolich and North, they make an important point that it is difficult to conduct research in Aotearoa New Zealand without encountering the Māori voice in one way or another. To deliberately avoid doing so is an "active non-endorsement of the Treaty of Waitangi" (2002, 176), and disallows Pākehā researchers the opportunity to "establish their boundaries and *be given space to rest their feet*" (Tolich and North, 2002, p. 177, emphasis authors' own). This echoes Pope (2008) who stresses the importance of Pākehā being allowed to find their way into understanding a kaupapa Māori research approach as it becomes a more commonly used within the academic world.

Both Tolich and North (2002), and Pope (2008) follow Glynn (1992), who stressed that deficits in knowledge or skill in cross-cultural research will never be addressed by the complete withdrawal of non-Māori from conducting research for the betterment of Māori, but through the engagement with Māori researchers and sharing those skills to directly help address research questions set by Māori. It is with this spirit that I endeavour to implement the principles that guide kaupapa Māori research into my own research. It adds integrity to the cross-cultural nature of the Tirohia he Huarahi research programme and develops my own personal commitment to conducting research that honours the Treaty of Waitangi.

6.8 Triangulation of Data

The triangulation of data is part of good research practice as a strategy to improve the credibility of research findings through the use of multiple methods and data sources (Mathison, 1988). Denzin (1978) outlined four basic types of triangulation: data triangulation, involving different times, spaces and persons; investigator triangulation, involving multiple researchers in an investigation; theory triangulation, involving the use of more than one theoretical framework in the interpretation of data; and methodological triangulation, involving the use of more than one method to gather data. He acknowledged that theory triangulation was flawed in its premise, but the remainder of triangulation types still stand strong today.

This research employs several of the basic types of triangulation specified above. Multiple methods are used to source data, through a series of interviews, a survey and document analysis, adding strength to the research process. The interview process is also strengthened through the use of multiple interviewers (see Appendix III to see which interviewers were present at each interview), which provides investigator triangulation. Informants were sought from both a central and local government perspective and included a number of Māori views, thus achieving data triangulation. The use of triangulation in this research enables a more balanced and detailed picture of the creation and subsequent implementation of the two provisions for co-management and devolution of decision-making powers to Māori.

6.9 Ethical Considerations

This research was covered by overarching ethics approval for the whole Tirohia he Huarahi project, which is guided by the doctrine of informed consent. Before each interview commenced, the informant was fully briefed on the aims of the research, and their right to decide whether or not their name and/or position would be used in conjunction with material taken from their interview. Due to the small and closely linked pool of the informants, opinions were likely to be able to readily be identified by anyone familiar with the Resource Management Law Reform and the subsequent review process. Recognising the 'smallness of New Zealand' is an important ethical consideration for research undertaken here (Tolich, 2001). To help circumvent any potential harm to informants as a result of their participation in the interview process, interview transcripts were returned to them to be checked and edited, with the request that the informants indicate if they would feel comfortable with the material being used in a public arena. Informants were also able to withdraw from the interview, and

indeed, the whole research project at any stage.

6.10 Interviews

Interviews are a form of oral history, a format bound deeply within te Ao Māori traditions of knowledge transmission and sharing. They are also a time-honoured tradition within Western social research paradigms (Klave, 2007). Interviews allow a story to be told, offering the interviewee the opportunity to reflect upon events, and their thoughts and feelings surrounding the events in question. In this research, answering the question about the intentions behind the development of the enabling mechanisms for Māori in the RMA required people to recollect upon both personal and professional opinions that were held at the time of its development – reflections which are ideally explored through the process of an interview. The use of key informant interviews provides a suitable technique for obtaining an overview of the research area, hopefully providing a range of relatively well-informed perspectives on the issues (Davidson and Tolich, 1999, p. 123).

The key informants were people who had been heavily engaged with or employed in the development of the Resource Management Law Reform initiated in 1987, and the subsequent review in 1990 (see table 6.1). Many of these informants are still actively involved with the use of the RMA in their professional capacity as iwi leaders, politicians, planners and lawyers. Unfortunately none of the informants were directly involved with the development of the joint management agreement provision in the RMA amendment in 2005, apart from Lindsay Gow who was still at the Ministry for the Environment. Nonetheless, all of the informants were aware of the amendment and were cognisant of its place in the political landscape, and some were actively involved with councils and iwi who were considering its use.

Those initially invited to be interviewed were chosen on the basis of their involvement with the inclusion of the Māori aspects of the legislation. From this point onwards, there were further potential interview candidates suggested by those being interviewed. This snowballing technique led to eleven interviews being undertaken across Aotearoa, which had the benefit of providing a degree of insight into the variation of regional experiences across the country.

It was important to balance the views of people who were directly employed in the development of the Resource Management Act with Māori perspectives on its development

Table 6.1: List of interview informants and their position held at the time of the development of the Resource Management Act 1991.

Informant	Position Held During RMA Development
Sir Geoffrey Palmer	Minister for the Environment
Lindsay Gow	Deputy Secretary - Ministry for the Environment
Philip Woollaston	Ministry of Conservation/Ministry for the Environment
Denise Church	Member of 1987 RMLR Group
Shane Jones	Member of 1987 RMLR Group/Tai Tokerau Leader
Ken Tremaine	Member of 1990 Review Group
Prue Kapua	Member of 1990 Review Group
Guy Salmon	Member of 1990 Review Group
Terry Lynch	Ministry of Fisheries
Tā Tipene O'Regan	Ngāi Tahu leader
Edward Ellison	Ngāi Tahu leader

and Māori engagement with the process. Two interviews were conducted with Ngāi Tahu informants, Edward Ellison and Tā Tipene O'Regan, as a window into some of the experiences and perspectives that Māori had at the time and have since been able to reflect upon. To obtain a wider view on the Māori experience on the development and the implementation of the Resource Management Act, I have been able to access a number of interview transcripts from the secondary phase of the *Tirohia he Huarahi* research programme. These interviews have been with Māori at a grassroots level across the country and have been invaluable in broadening and informing my personal understanding of the issues of resource management and Māori participation. This approach has provided a range of emic and etic perspectives, reflecting on both the creation of the legislation as well as its subsequent application in a practical sense. This diversity of views creates strength in the research.

Despite efforts to contact all those who were key participants in the development of the RMA, not all were able to be contacted, and not all those approached were able to grant the time for an interview. Given that not all of the possible informants were able to be included in the interview process, some important perspectives may be missing from the research. Around twenty years has lapsed since the Resource Management Law Reform, which meant that many informants were not entirely confident in their recall of events. However, this significant amount of time since their involvement also allowed a greater degree of detachment and therefore potentially permitted a more objective reflection on the entire process.

A semi-structured interview style was employed to question informants about the development of the Resource Management Act and their reflections on its implementation over

the past two decades. This approach was chosen for a number of reasons; firstly, it allows interviews to flow more naturally thus allowing informants to speak more freely, secondly, it allows for interesting issues that arise during the interview that may not have been previously considered to be elaborated upon, and thirdly, it offers an relatively informal structure without being prohibitively prescriptive as to how the interview plays out (Henn *et al.*, 2006). Whilst there are many benefits to using a semi-structured interview approach, there are also a number of corresponding issues that must be taken into account (Myers and Newman, 2007). Not everyone was asked the same set of questions, nor were the questions always phrased in the same way. Different wording of questions may elicit different interpretations of what is being asked and how to appropriately respond. There is also the potential for informants (and the interviewer) to diverge from the focus of the interview. The challenge is in ensuring that interviewees are adequately guided to meet the purpose of the interview, whilst not limiting or dictating their responses.

Interviewees were asked to consider five different key topics. They were first asked to identify the underlying objectives and intentions behind the law reform from the government perspective at the time. Questions then explored what influenced the start of the law reform in the first place, how the consultation process worked out and the extent to which iwi were involved within the law change. Informants were then asked to reflect on whether they thought the resulting legal mechanisms reflected aspirations expressed at the time, and if these mechanisms have been successful since their inception.

6.11 Applying Kaupapa Māori Principles to the Interview Process

Throughout the interviewing process the principles of a kaupapa Māori approach were applied. All interviews were held in person, *kanohi ki te kanohi*, at a time and location suggested by the informant to ensure that it fitted in with their needs and allowed them to feel at ease whilst being interviewed. This shows *aroha ki te tāngata* by allowing the informant to define their own space and to meet on their own terms. The interviews were structured in such a way that informants were given ample opportunity to direct the interview, and there was a process of reflection back and forth between the interviewee and interviewer to ascertain that their words were being heard correctly. *Titiro, whakarongo... kōrero* guided my interactions with informants at all times, as the greatest learning comes from listening to develop an understanding before speaking. *Kia tūpato* was exercised through the return of in-

terview transcripts to informants for further reflection and potential alteration of their kōrero. This gave informants the chance to review the way that they had presented themselves and their views, giving them and the research a safety net. *Kaua e māhaki* came naturally to the interview process, as being someone in the presence of people who were actively involved with the development of the RMA, it was obvious that the informants were much better versed than I in the history and political landscape of the time. Having well-regarded interviewers present, including Rauru Kirirkiri, Henrik Moller and Jonathan Dick, was important in gaining access to informants and respected their mana through their presence.

6.12 Analysis of Interviews

After the interviews had been conducted, the audio recording of each was transcribed and returned to the informant. The informant was then given the option of editing the content through deleting, altering or adding to the transcript. The transcripts, thus edited, were returned to be analysed. Each returned interview was coded according to reoccurring themes, which permitted the material to be analysed across participants and perspectives. The themes were developed out of Cleaver's (2002) concept of 'institutional bricolage,' which creates a framework to discuss ideas about how resource management mechanisms and opportunities for collective action are constructed, through existing styles of thinking, institutions and sanctioned social relationships. The results of the interviews are discussed in Chapter Eight.

6.13 Survey of Councils

Currently the documentation of the use of the transfer of power and joint management agreement mechanism is limited, with only a single comprehensive survey of councils in 2000 covering the usage of the transfer of power mechanism (Rennie *et al.*, 2000). Coates' (2009) work focused on the single joint management agreement in operation, and she speculated that there might be an increase in their numbers depending on the success of the first one. Apart from these studies, the first now ten years old and the second limited to a single case, the extent to which these two provisions have been implemented across New Zealand is not documented. To establish the uptake of the two mechanisms across the country, a survey was sent out to all 86 local authorities in New Zealand, which are made up of 12 regional authorities and 74 territorial authorities (city/district councils and unitary authorities).

A simple survey (see Appendix III) was sent out digitally to all these local authorities. The questions followed a simple yes/no format to quantify the number of transfers of power and joint management agreements in existence, and requested elaboration if there were any, or had been any approaches to initiate the use of one of these mechanisms Councils were then asked about alternative co-management arrangements which they may have used instead of the RMA provisions to enhance Māori participation in resource management planning. At the conclusion of the survey, respondents were given space to express any further comments that they had about the uptake of these provisions within their council.

The survey results were analysed by quantifying the number of times the provisions were used. The number of approaches and requests to set up a co-management arrangement were also recorded. Answers to the open questions on alternative arrangements and council perspectives on their uptake were grouped into like kinds to give a sense of commonalities between different councils. The results of the analysis are presented in Chapter Seven.

6.14 Conclusion

The approach selected to conduct this research attempted to incorporate the principles of a kaupapa Māori approach and apply them to qualitative social science methods. The use of multiple methods and data sources enabled the triangulation of data, which gives greater validity and strength to the research. Analysis of data from interviews, surveys and documents drew on the idea of institutional bricolage to understand the construction of mechanisms for collaborative relationships to manage resource management (Cleaver, 2002).

Chapter 7

Survey Results

7.1 Introduction

The survey of councils sought to determine the extent of the usage of Section 33 transfers of power and Section 36B-E joint management agreements, and whether alternative arrangements were being used in their place to achieve similar ends. The response rate to the survey was exceptionally high, with all 86 local authorities responding to the questionnaire.[1] All surveys were completed in full, but with varying degrees of detail, generally according to the level of engagement that councils appeared to have with tāngata whenua. In this chapter, I will discuss the results of the survey, looking in turn at transfers of power, joint management agreements and alternative arrangements. I will then draw together the comments made by the survey respondents about their views on the uptake of these provisions, which will provide an insight into councils' attitudes towards co-managing resources and assets with tāngata whenua.

It is important to note that the survey responses may not provide an entirely accurate reflection of the actual numbers of uptake of these provisions. This is for a number of reasons. The accuracy of the responses was dependent on the person who completed the form, and it is impossible to say whether or not they had sufficient knowledge and familiarity with the council's past actions. The surveys may have been completed by someone who was not completely familiar with the Resource Management Act and its provisions, or who had a limited knowledge of or access to the institutional history. It must also be kept in mind that

[1] Note: This survey was conducted before the Local Government (Tāmaki Makaurau Reorganisation) Ammendment Act 2010 was implemented in the October 2010 local body elections, almagamating the eight city, regional and district councils of the Auckland area into one authority to govern the area.

the responses to the open questions are potentially more a reflection of the individual who answered than the official stance held by the council.

7.2 Section 33 Transfers of Power

As noted previously, the last nationwide survey investigating the numbers of Section 33 transfers of power established that there had not been any transfers in the first decade of the RMA's existence (Rennie *et al.*, 2000). The first question in the survey sought to discover whether or not there have been any changes in the ten years since then.

Only two councils claimed to have used a Section 33 transfer of power to devolve authority to an iwi. The respondent from Porirua City Council stated that the transfer of power covered "joint management agreements between Porirua City Council and Ngāti Toa on common issues that may impact on the city as a whole." Further enquiries revealed that this was not a Section 33 transfer of power and the initial respondent misinterpreted the question. The Taupō District Council respondent stated that it has joint hearings on applications on Māori freehold land and there is a second transfer pending, which will cover management of the Waikato River. Upon further investigation, it was revealed that although the council had considered a transfer of power as part of the joint management agreement with the Tūwharetoa Māori Trust Board, it had been decided against it as "the consultation required was too extensive" (D. Tauhau, personal communication, 1 December, 2010). No other councils claimed to have utilised Section 33 so it is clear that there have been no transfers over the 19 years since the RMA was implemented.

As for the number of approaches from tāngata whenua to local authorities seeking a transfer of power, council responses were predominately in the negative. Seventy-five of the responses to the survey stated that no approaches had been made, while eleven councils had received approaches seeking a transfer of power. The figures are given with caution, as accuracy is not guaranteed given the points made earlier, but they do provide an indication of the lack of readiness of both local authorities and tāngata whenua to consider this as a valid option.

What might be considered an approach for a transfer of power is also open to interpretation, as councils seem to consider formal approaches to be those that are presented in a written format (Rennie *et al.*, 2000). There may well be differences between this and what iwi may consider a formal approach. Without asking each iwi/hapū for their perspective, it is

difficult to ascertain the precise number of attempts to secure a Section 33 transfer of power, and this was outside the scope of this research. With Māori culture placing an emphasis on the strength of the spoken word, it is possible that genuine approaches or requests were dismissed or went unrecorded by local councils. Unless these discussions were documented in writing by the council, they may not be readily recalled. Accurate and up-to-date records are an essential part of meeting the requirements of the RMA in consultation with tāngata whenua. This is documented in Section 35A, which stipulates that councils keep and maintain records of their contact with iwi/hapū authorities that represent tāngata whenua in their area.

In the eleven instances where survey respondents recalled an approach about a potential transfer of power, they had been centered on informal discussions, rather than through a formal proposal or request. Several respondents noted that transfers of power had been identified in local iwi management plans as a potential development in the future, but these have not been followed through as yet. Environment Southland, for example, noted that Ngāi Tahu has brought up Section 33 a number of times in discussion over the years, as well as having put it into their iwi management plan as a method to exercise kaitiakitanga. Some iwi have had high-level discussions with councils about the potential for a transfer of power, but concluded that the timing or situation was not amenable to a successful transfer. In the case of the Northland Regional Council, the Waitangi Tribunal had urged them to consider setting up a transfer of power as Treaty settlements were nearing completion. However, after much discussion and assessment of their circumstance, it was recognised by the iwi themselves that they did not have the capacity to successfully take on the responsibilities of such a transfer of power at that point. The idea of having powers devolved to iwi to manage their environment is being kept in mind as the Treaty settlements are worked out.

In other regions and districts, respondents were aware that Section 33 was on the radar of some tāngata whenua, but this had not been directly communicated to the council at the time of the survey. Another council was currently investigating the possibility of devolution of power to an iwi to manage an unspecified resource, but was considering that option alongside a range of alternatives. The respondent suspected that it might possibly fall within the realms of a co-management agreement, which would be more enticing to councils as it involves power sharing rather than the devolution of power to another agency.

Looking beyond the delegation of powers to an iwi authority, it was acknowledged by some respondents that Section 33 had been used in their area with transfers of power being granted to authorities other than iwi. One example of this is the Auckland Regional

Council's delegation of some of its functions to the Rodney District Council for coastal consent processing and monitoring within the Rodney District. The surveyed authorities were only asked about transfers of power involving iwi/hapū, and no questions were asked that would allow determination of how much there were used with other types of public authorities, such as central government or another council. The 2000 survey considered this aspect of transfers of power, finding that, although difficult to quantify accurately, 27 local authorities had received a transfer and 11 had given a transfer to a local authority (Rennie *et al.*, 2000, p. 25). In hindsight, it would have been valuable to include all forms of transfers in the survey, as it shows a certain willingness by councils to use these provisions in some, perhaps more familiar, circumstances.

7.3 Joint Management Agreements

Councils appear to favour the joint management agreements approach over transfers of powers. There is one confirmed joint management agreement in operation, and another five reportedly already in operation. Three councils reported that there were three more currently in the process of being established. However, despite being more common than transfers of power, the vast majority of local authorities could not recall any approaches from tāngata whenua to set up joint management agreements, nor was it recognised as a common topic of discussion and debate, requiring further investigation. Once again, the accuracy of the results is not entirely guaranteed due to the issues described above for the responses to the first question about transfers of power. Nonetheless, the responses provide a good reflection of willingness for power-sharing between tāngata whenua and local authorities.

The most well-documented joint management agreement is between the Taupō District Council and the Tūwharetoa Māori Trust Board and was signed at the beginning of 2009 (Coates, 2009). The Agreement states that its purpose is to:

> provide the basis to develop and confirm a relationship and understanding between the parties with regard to the administration of the Act in relation to multiply owned Māori land within the traditional rohe of Ngāti Tūwharetoa Iwi within the Taupō District.
>
> (Taupō District Council and the Tūwharetoa Māori Trust Board 2009)

It is estimated that over fifty percent of the Taupō District is Māori-owned land, and this joint management agreement is seen as an attempt to improve Māori participation in the decision-

making process over this land. Māori land owners are now able to have their resource consent applications and private plan hearings heard by a mixed representation of Taupō District Councillors and Tūwharetoa Māori Trust Board commissioners. Previously all applications were heard solely by representatives of the Council. It is anticipated that the joint hearing panel will "provide for an enhanced recognition of the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga considered fully in the decision making process" (Taupo District Council, 2010).

This agreement has already been acknowledged for its groundbreaking work by winning a major prize at the 2009 New Zealand Planning Institute Conference, which recognises excellence in planning on a national level. The NZPI considered their efforts a significant milestone in planning for tāngata whenua with "the development of a creative and innovative governance structure, giving effect to the principles of the Treaty of Waitangi, implementing empowering provisions of the Resource Management Act and paving the way for extending the 'iwi' partnership in the future" (Taupo District Council, 2009). Although initial responses have been positive, the joint management agreement is still very young, and it is too early to gauge how effective it will be in meeting its goals. Its real worth will be revealed as this relationship develops over time.

Aside from the Taupō District Council's current joint management agreement with Ngāti Tūwharetoa and one pending for the Waikato River, there were six other councils that identified as having a joint management agreement in place. Two of these did not specify what exactly the agreement covered, two had agreements that were pending, and the remaining two described their joint management agreements in terms of consultation policies and memoranda of understanding. From this it is evident that some respondents had misinterpreted what was meant by a joint management agreement under the RMA. The Porirua City Council, for example, described its joint management agreements with iwi as being the formal documentation of their memorandum of understanding and their agreements around consultation processes. Regardless of their intention, such agreements are not a joint management agreement under the RMA legislation as they are not about shared decision-making powers.

The two pending known joint management agreements were both for the management of the Waikato River. The Taupō District Council was about to enter into one for the river as their second joint management agreement and the Waipa District Council signing their first with the firm belief that it would be followed by many more similar agreements with tāngata whenua in their region. Environment Waikato also stated that joint management

agreements were a priority objective, especially with their existing close relationships with kaitiaki helping "pave the way to the creation of co-management agreements."

Three other councils stated they were in the initial stages of exploring the potential and viability of establishing joint management agreements. The South Taranaki District Council and the Gore District Council are currently in the process of investigating joint management agreements with their local tāngata whenua. At the time of writing, there were a number of discussion papers being circulated through local iwi for feedback and development on protocol agreements. The Franklin District Council had some discussions with tāngata whenua prior to 2007 but nothing has eventuated as of yet.

The recent amalgamation of the eight local authorities in the Auckland region was something that respondents considered conducive to establishing new and more participative arrangements with the area's tāngata whenua. A number of the councils that were about to be merged into the newly-formed Auckland Council mentioned that they anticipated that joint management agreements would be on the agenda in the upcoming years. It remains to be seen how quickly the new council will act on formalising agreements with tāngata whenua. One of the merging councils, Manukau City Council, was set to sign co-management agreements with two mana whenua groups before its disestablishment on 31st October 2010. These two agreements cover Te Pūkaki Tapu o Poutukeka Historic Reserve and the Waiomanu Parks Reserve. At the time of answering the survey, it was unclear whether RMA joint management agreements would be utilised, or whether the agreements would stand alone under specific legislation for the purpose.

In terms of expired joint management agreements, the respondent for the Waimate District Council recalled that there had been a joint management agreement with iwi prior to 2001 which formalised Māori participation in hearings for the District Plan. However, this agreement was prior to the 2005 amendment which introduced joint management agreements, so it cannot have been one. The respondent did not elaborate on why this agreement no longer stands or whether the Council would consider re-entering into such an agreement. No other councils mentioned the existence of joint management agreements that were no longer operational.

As Coates (2009) concluded, joint management agreements have yet to reach their full potential as a tool for iwi to have more involved and meaningful participation in the management of important natural and physical resources. However, it is evident that since the signing of the first joint management agreement with Ngāti Tūwharetoa, both councils and iwi have become more proactive about seeking similar arrangements within their own

region and rohe.

7.4 Alternative Co-Management Arrangements

Although the vast majority of councils have not entered into joint management agreements, or transferred powers to an iwi/hapū authority, many of them had established some form of recognised relationship agreement between them. From the responses to the survey, it appears that there is a wide array of alternative arrangements used by councils to foster effective participation by Māori in resource management issues. The level of engagement varies significantly, and many do not fall into a relationship which could genuinely be termed a co-management arrangement. For example, 17 councils stated that they have signed memoranda of understandings (MoUs) with local iwi/hapū, but these are generally documents which outline the relationship between the two parties rather than agreements which allocate responsibility for the management of resources.

One council commented that signing a memorandum of understanding with one local iwi had actually resulted in a deterioration of their relationship. The council is unable to provide the level of resourcing required to enable them to participate more fully in resource management (the provision of staff, office space, computers and so on), resulting in some disillusionment. In spite of this, the iwi involved remains committed to the terms of the agreement. Another complicating factor for this council is that there are eleven other iwi in the area that also claim mana whenua status, who now expect that they will also be able to sign similar MoUs with the council. The council does not have the resources to do so, and having encountered some problems with the existing MoU, are hesitant to enter into more at the current time. The council's engagement with all iwi groups is fraught with difficulty due to the intensely political nature of trying to navigate fair relationships with the twelve different iwi, all wishing to act as kaitiaki for overlapping areas of the same whenua. This stands as an example of the challenges that face local authorities who wish to foster closer iwi relationships with limited resources.

Responses to the survey suggested that the number of co-management agreements in existence is set to increase substantially over the next few years. The survey identified 17 councils that already had them in place with tāngata whenua, and a further four which were either in the process of establishing one or anticipating being approached to initiate negotiations for a co-management agreement. Three councils stated that they had received requests from local iwi, but had not yet acted upon setting up an agreement. Of the councils that were

actively engaged with trying to ensure more effective participation by Māori in resource management planning, it was difficult to ascertain from the survey responses the level of power sharing involved or anticipated.

Some of the co-management arrangements described were very closely prescribed, such as Ngāti Pahauwera, who share the management of the extraction of gravel from the lower Mohaka River with the Hawkes Bay Regional Council. This agreement sets out that a selected member of iwi will liaise with the Council on the annual sustainable allocation of the gravel, the location of extraction sites and monitoring the sites. This is the only co-management agreement that this council currently has in operation. Other co-management agreements were much broader in scope. Several local authorities had arrangements in place to manage resources such as wāhi tapu and cultural heritage with input from local iwi. Some, like the Selwyn District Council, had signed formal agreements with tāngata whenua under the Reserves Act 1977 and the Local Government Act 2002 to manage a site of cultural importance. Others, like the Kaikoura District, had more informal arrangements with tāngata whenua, which the respondent believed to be adequately addressing matters pertaining to cultural heritage. The Southland Regional Council stated that it worked closely with iwi through a co-management arrangement that stands outside of the RMA. Environment Bay of Plenty had entered into co-management agreements with Te Arawa over the Te Arawa Lakes as a result of their Treaty settlement and are about to sign similar agreements with Ngāti Whare and Ngāti Manawa over the upper Rangitaiki River. These councils did not specify what level of decision making power the agreements afforded iwi, nor did they give any indication of how effective they were in achieving their common goals. The Waikato District Council has a co-management agreement with Waikato-Tainui which is part of the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010. Other councils have service provision agreements in place rather than co-management tools, which enable the requirements of consultation under the RMA to be more readily met.

Two councils that did not have any formalised arrangements in place, claimed to be working closely with tāngata whenua already, with the suggestion that operating under good faith was sufficient. They questioned the need to use the provisions in the RMA, implying that they were not a suitable basis from which to found positive relationships with tāngata whenua. An iwi perspective on these particular relationships would be interesting to enable a comparison of whether these councils have a good understanding of how they are actually perceived. Without approaching the iwi in question, it is impossible to gauge how effective these councils are in helping to meet the resource management aspirations of tāngata whenua and whether or not their working relationships are as solid as the councils report.

The most alarming finding from this survey was that 69 out of the 86 local authorities stated outright that they did not have any form of co-management or co-governance arrangements in place with iwi. This figure does not include those who have MoUs in place or formalised arrangements to meet the requirements of consultation under the RMA. Out of these councils without any existing co-management arrangements, only a small proportion mentioned that they were awaiting the settlement of Treaty claims. This figure is a strong indication that there is still a long way to go before Māori are given decision making powers to manage resources that are of significance to them.

7.5 Councils' Commentary on Barriers to Implementation

The most informative section of the survey was the request for further comments on the uptake of the two RMA provisions. This offered an insight into the attitudes, relationships and aspirations of councils towards the involvement of tāngata whenua in resource management. As mentioned earlier, the responses are potentially more of a reflection of the person writing them, but they are however, a good indication of the culture of the council they work for and the general attitudes and perceptions held by the council. From these responses, it was possible to determine some of the factors that were inhibiting the uptake of the two provisions for Māori, the role that the political process plays in making them happen and an indication of what these relationships might look like in the future.

A considerable amount of research has been done already with a focus on the barriers which inhibit tāngata whenua and councils from pursuing co-management agreements in New Zealand (Prystupa, 1998; Rennie *et al.*, 2000; Hayward, 2002; Coates, 2009). The same barriers are identified time and time again by researchers, and in the survey the local authorities articulated similar reasons why joint management and the transfer of powers, duties and functions still remains unfeasible. Some of the barriers that were frequently mentioned included issues of liability/accountability, iwi capacity, cost efficiency, conflicts of interest with the wider community, and resourcing. These factors will be expanded on below.

The most common reason expressed by councils as to why there had been no use of the two provisions under the RMA was the percieved lack of capacity iwi held to be able to do the job effectively and efficiently. It was doubted that iwi authorities had the time or the resources to be able to take on the responsibilities of managing and monitoring a resource. One respondent asked, "Do they have the administrative and management capability to manage natural resources, or otherwise?" and then reflecting upon this statement added another

question, “It would be good to ask the iwi whether they are ready for a Section 33 or 36(B-E) of the RMA?” This statement could be interpreted in several ways. Possibly there is limited communication between the council in question and the iwi, in that the council is unaware of their capacity and/or willingness to enter co-management arrangements, or perhaps the respondent understands the need to be proactive and ensure that iwi are ready and able to take on the responsibility of a transfer of power or a joint management agreement. They may also have been referring to extending the research to include iwi perspectives, which unfortunately was not a viable option during this study.

Two other respondents had a greater awareness of the capacity of the local iwi, and knew that they had prioritised their limited staff and resources to spend their energy on matters of planning, rather than management, monitoring and evaluation. One of these observed that tāngata whenua in their area were already struggling with their current resource management obligations. The prioritisation of using energy and resources to settle Treaty claims before pursuing co-management was also noted by a number of councils as being the current situation for tāngata whenua in their areas. In a similar vein, six respondents spoke directly of the financial cost of setting up and running co-management agreements. They voiced concern that the cost of devolving power to an iwi authority was prohibitively expensive for both council and tāngata whenua, especially to set up the administration of the transfer. Councils were uncertain about the requirements of the Act in determining who was responsible for funding such an arrangement, and the inefficiencies of reallocating council money to iwi to complete a task that council were already doing. A respondent noted, “Section 33 transfers are great in theory but need further work on the practicality of implementing them, particularly the funding for the ongoing operation of the authority.”

Another commonly raised theme was the issue of liability. Transferring powers to an iwi authority came with the risk that councils would be held responsible for the wellbeing of the resource under question, despite not being the agency managing it. As one person said, “Transfer is not an easy option whilst the Council remains responsible for the administration of the plan.” It was pointed out by another respondent that the RMA was amended to make it absolutely clear that local authorities retain the responsibility for the transfer, and as Section 35(2)(c) states, the local authority will also monitor the exercise of any functions, powers, or duties delegated or transferred by it. Taken at face value, delegation is perceived by councils as being inefficient and a poor use of council resources and energy.

Some respondents voiced an opinion that there was simply not enough resourcing or guidance from central government to make the options of Section 33 and joint management

agreements feasible. One respondent believed that this could be remedied by more effective resourcing from central government to develop guidelines, national policy, regulations, and specific guidance in the main statutes. An important point made was that because there has been such limited uptake of these provisions, the sections have not been extensively tested in practice, so there are no examples to guide councils and iwi in a practical sense either. This has created a self-perpetuating cycle where councils are unwilling to pursue these options as they have no guidance from central government or from existing arrangements, and because there is such limited uptake of these provisions, no guidance or support is developed to help foster their use.

Two councils raised the issue of Māori representation at council level. It is a well-established fact that New Zealand's current democratic electoral system rarely, if at all, results in true representation of Māori in local government (Hayward, 2003; de Bres, 2010). One respondent mentioned that they currently had three elected Māori on their council with whakapapa connections to local iwi. This is an exception to the norm, so most councils have had to investigate alternative methods to get a Māori perspective on matters of environmental management. In responses to the survey, many described alternative options which allow, to some degree, a Māori voice in some areas of resource management planning, and to a lesser extent, decision making processes. The majority of these were related to the consultation requirements of the RMA, rather than actively sharing management responsibilities or decision-making, which suggests that many councils do not go far towards establishing real partnerships with Māori.

As one way of remedying this problem of representation, the Southland District Council described a solution that they thought might improve resource management decision-making. They had invited tāngata whenua to appoint a suitable person to stand as an iwi hearing commissioner to participate in RMA decision-making to ensure that a kaitiaki perspective helps form the decision. At this point, the iwi was yet to take them up on the offer, but it was hoped that it would happen in the near future. All up, eleven councils described establishing roles for iwi representatives to have input into plans and policy statements and some offered support and assistance to tāngata whenua to help in the compilation of iwi management plans. Iwi management liaison officers were mentioned in several instances where the council employs someone from the local iwi to work as an active link between tāngata whenua and council. These relationships are all part of working towards improved relationships between the Crown and Māori. However, for the most part, they have not advanced to a point where they can be considered true partnerships.

The Treaty settlements process was identified by many as the biggest scene changer for councils' relationships with Māori. There was ready acknowledgement that Treaty settlements undoubtedly transform the political and cultural landscape, and many councils were anticipating forging new and stronger ties with iwi to meet the terms of their settlements. One respondent believed that Treaty settlement processes will lead to co-management arrangements in the future, suggesting that settlements might mean that that transfers of power and joint management agreements will finally become commonplace. Others considered that it was clear that "the current Treaty settlement process will establish other models for co-management/co-governance."A less optimistic respondent did not consider that the provisions in the RMA would ever be pursued by Māori, stating that "In the real world, post-settlement iwi aren't in a position to deliver on these arrangements." They then explained that this was because "in the real post-settlement world, iwi have a preference to focus on corporate management and their own in-house priorities, as opposed to setting up expensive bureaucracies to service arrangements like these." It remains to be seen how much emphasis iwi will place on increasing their role as kaitiaki working with local government on a more equal footing. As Durie (1998) emphasised, the active practice of kaitiakitanga is a central pillar of tino rangatiratanga. It is likely that post-Treaty settlement iwi will want to secure greater decision-making powers in environmental matters.

With most respondents being very conscious of the Treaty settlement process and its implications, some councils mentioned that they were waiting for an approach from iwi authorities in their area, believing that these would occur once they "come to terms," in the words of one respondent, with their Treaty settlement. Without having gone into greater detail with the survey, it is hard to determine whether or not these councils' current relationships with tāngata whenua to empower Māori participation in resource management and planning. It may perhaps indicate a lack of initiative on local authorities' behalf to wait to start building on tāngata whenua relationships with a view to establishing genuine co-management or co-governance arrangements until the Treaty claim has been settled. The Hawkes Bay Regional Council, as an example of looking to post-Treaty settlement developments in relationships with iwi, are considering setting up a joint Regional Planning Committee, which would be established through legislative changes. This committee would comprise of equal representation of councillors and tāngata whenua and would be responsible for preparing and reviewing the regional policy statement and regional plans. This would be the first time in New Zealand that a statutory committee has been set up for this purpose. Councils awaiting the settlement of Treaty claims in their area might do well to consider this period as an opportunity to undertake their own investigations as to how they might best approach issues of

co-management. This way they are well prepared to engage proactively with iwi once they have their claim settled. It is almost certain that post-settlement iwi will seek to have a more active role in resource management.

It is obvious that most councils are still unwilling to go down the path of co-management agreements with tāngata whenua at this point. A number bluntly stated that the reality of Section 33 being embraced by local authorities was extremely unlikely. "It does not surprise me that there have been no Section 33 transfers of power to iwi to date... it is unlikely local government would take the initiative to do this and therefore relies heavily on iwi to identify such a transfer as beneficial to themselves." This echoes several responses that suggested that they were awaiting approaches from tāngata whenua, if and when they had settled their Treaty claim. Another respondent explained that the reason for the lack of energy put into pursuing transfers of power by council was largely a political matter. They stated that, "Section 33 delegations are largely politically unpalatable to local government politicians. In my opinion, there are, unfortunately, few votes to be gained by giving Māori control over assets." Until the political will is present, iwi will struggle to ever enter into genuinely collaborative partnerships, and transfers of power and joint management agreements will remain unlikely.

7.6 Conclusion

The degree of uptake of transfers of power and joint management agreements under the RMA has been very limited, even though there have been twenty years for councils and iwi to become familiar with them. Although there were two councils that stated that they had transferred power to an iwi authority, and seven with alleged joint management agreements, it was clear from the descriptions provided that they were not accurate representations of these two provisions and Table 7.1 contrasts claimed and confirmed transfers of power and reflects the best estimate of the actual situation.

The numbers of requests from iwi to set up the use of these provisions was also hard to assess accurately as there seemed to be some confusion amongst the respondents as to what a proposal for one of these provisions actually entailed. It was clear that local authorities did not keep easily accessible or records which detailed the requests. Equally, without approaching iwi and hapū, it is difficult to confirm the number of approaches that have been made to set up either a transfer of power or a joint management agreement. A constraint of the survey was that due to its intention of simply establishing the number of times these provisions have been used, it did not seek to ask the reasons why they have been used or not. Nonetheless

Table 7.1: Summary of survey responses about council uptake of provisions for co-management under the RMA.

	Regional Councils (12)	District/City Councils (69)	Unitary Authorities (5)	Total Confirmed (86)
Transfer of Power	0	2	0	-
Confirmed Transfer of Power	0	0	0	0
Claimed Joint Management Agreement	0	6	1	-
Confirmed Joint Management Agreement	0	1	0	1
Pending Joint Management Agreement	0	3	0	3
Alternative Co-Management Agreements	4	12	1	17

the survey responses give a clear indication of the current attitudes towards entering into co-management agreements with Māori. Some see it as inevitable as Treaty settlements proceed that co-management agreements will become the norm, yet others felt that they will never be an option due to the perceived inefficiencies in setting up the administration and technical systems and then maintaining them to devolve or share power with iwi.

There is a widespread consensus that the Treaty settlements process will create a completely different environment for co-management arrangements between tāngata whenua and local government, and potentially other third party agencies. Until this happens it seems unlikely that many councils and iwi will embark on co-management arrangements under the RMA, if at all. The provisions do not provide clear guidance in themselves, and central government has not developed assistance to support and encourage their use. The fact that there are joint management agreements currently in operation, bar the one exception in the Taupō District, gives government little impetus to encourage more. Until there is more resourcing and guidance from central government, it will be difficult to ensure that the 69 councils that do not have any form of co-management with local iwi begin to consider how they might actively engage tāngata whenua in genuine partnerships to manage environmental resources. To summarise, in the words of one survey respondent, "[We] have made much progress, but there is still much to do."

Chapter 8

Intentions behind Provisions for Māori in the RMA

8.1 Introduction

Having established that the uptake of the provisions for co-management with iwi in the Resource Management Act has been negligible to date, we turn to examining the intentions behind them. The interviews with key informants focused predominantly on Section 33 transfers of power as the informants were involved with the drafting of the original legislation, rather than the amendments to the RMA that were made in the following years. The eleven informants were, however, able to make comment on the joint management agreements as a mechanism for co-management and to speculate on the slow uptake of this provision as described in Chapter Seven.

This chapter reports on the findings from the interviews and is structured chronologically. It first discusses what the informants considered to be the most important influences on creating the provisions for Māori in the RMA. The broad intentions behind the creation of those provisions, with particular focus on the objectives behind the transfer of power mechanism, are then discussed. The interview findings will be expanded on in greater detail in the following chapter, where the concept of institutional bricolage is employed to contrast the design of the RMA co-management provisions with the actual mechanisms that have eventuated between iwi and councils.

8.2 Reflections on the Creation of the Resource Management Act

Informants recalled various influences, at both a personal and institutional level, that contributed to the development of the resource management law reform's shape and content. Many recalled individuals from within Māori circles who were highly active in the Treaty claims settlement process, who were of a high profile at the time. Nganeko Minnhinnick was mentioned by virtually all informants because of her unwavering efforts in the Manukau Treaty claim, which was strongly influential in shaping the Treaty principles relating to environmental issues. Others identified as being influential in shaping people's opinions and knowledge about environmental management from a Māori perspective included Reverend Māori Marsden, Aila Taylor, Betty Williams, Carmen Kirkwood and Justice Eddie Durie, who were all closely involved with Treaty claims as well.

Sir Geoffrey Palmer was another key individual who was mentioned by most informants. He was acknowledged as instigating the law reform process and ensuring that Māori were well catered for in it. Informants believed it was his enthusiasm for legislative reform combined with his recognition that the Treaty needed to be enshrined in the legislation that gave the RMA its resulting shape. Palmer himself said he had been paying close attention to the Waitangi Tribunal's reports and was impressed with their impact through the Planning Tribunal. In his opinion, it was important that Māori cultural approaches to the environment were reflected in the statute. Palmer felt that Māori interests would be best served by the inclusion of references to the Treaty in its text:

> *Māori environmental attitudes needed to be reflected in the law so that they could be given weight to when those sorts of decisions came to be made. And that is why a great deal of effort was made to suffuse Māori concepts into the statute.*
>
> (Palmer, 2009)

Palmer ensured that the RMLR group had strong Māori leadership through the appointment of Shane Jones to the team, and ensured that the consultative process sought views on the issues that Māori saw as being an important part of the resource management law reform. Palmer believed that a great deal of energy was put in to "suffuse Māori concepts into the statute" and remains proud of the outcome of that effort.

Denise Church, Lindsay Gow and Prue Kapua named Shane Jones as being particularly influential in his role with the original RMLR group. His sound understanding of

Treaty issues and passionate promotion of Māori interests broadened the rest of the group's understanding of Māori issues. Jones noted that he was supported and guided in his work by a coterie of Māori advisors. He felt that their input and guidance was highly significant in the shaping of the legislation and ensuring that protection for Māori interests was included in the Act.

The Ministry for the Environment had been recently formed in 1986, and one of its first major tasks was undertaking the Resource Management Law Reform. The Ministry was a departure from the old government structure as state-led development had been separated from environmental matters, and a distinction made between the two for the first time. It was the first government department to take on a Māori name and its staff actively sought to imbue their work with a sense of Māori values. The name, 'Maruwhenua,' which Shane Jones defined as meaning a protective shielding of the land, heralded a change in attitudes, and its staff were eager to demonstrate that they were proactive in reaching out and including Māori perspectives in their work. As Prue Kapua recalls, "the inclusion of provisions for Māori was greatly helped by a genuine desire from within the Ministry to improve matters."

International fuelling of this new approach to environmental management came from the Brundtland Report, which was released in 1987 (Young, 2001). Interviewees described it as hugely influential on resource management thinking at the time, offering a new framework with which to contemplate the natural world and how humans interacted with it. The report was mentioned by virtually all informants as a driving force behind the law reform, not just for delivering the concept of sustainable development to the world, but also for its inclusion of a role for indigenous peoples in achieving sustainable development. Prue Kapua relates that:

> *. . . the change that was coming through internationally, in terms of dealing with the environment – that it[the RMA] had to be a lot wider, a lot more philosophical. And for us, for it to be philosophical, it had to include indigenous issues in there.*
>
> (Kapua, 2009)

Kapua attributes part of the push for the inclusion of indigenous values in the RMA to the burgeoning international indigenous rights scene. New Zealand was sending Māori representatives overseas to United Nations'events and hosting indigenous peoples from all around the world in turn. As well, the New Zealand government was sending representatives to conferences addressing matters of indigenous rights. Ken Tremaine was one such representative

and he recalled being sent to a conference in Montreal on indigenous input into resource management law in 1989. He names this as the pivotal moment for him personally in terms of understanding indigenous perspectives. He remembers thinking to himself:

> *Now, in my view conceptually, here is the medicine wheel, here is the sustainability model – it's been around for centuries! What on earth are we doing trying to re-invent the wheel!? These people have the knowledge and they've applied it.*
>
> (Tremaine, 2009)

It was with this recognition in mind that he actively sought out advice from indigenous elders at the conference, which he took back with him, and later called on to inform his work on the review team. He continues this practice today of finding mentors from within te Ao Māori to guide and strengthen his work practice as a planner. He believes that it is important to seek guidance and build relationships with people active in the Māori world to broaden thinking and inform environmental management practices.

8.3 Reflections on Consultation

The RMLR group was applauded by all informants for their efforts to reach out to the public to inform the development of the legislation. In contrast, those involved in the second review group, formed after the National Party's election success in 1990, felt that the process was quite hurried and was limited to answering the questions that the review group had raised, rather than looking for public feedback on the existing form of the Bill.

Prue Kapua does not recall the consultation process that the Review Group went through with much fondness. Her memories of it are tinged with suffering from morning sickness, but even so, she does not believe that there was adequate time to do the questions justice, and that many of the meetings were dictated by what they needed to get, rather than to explore broader ideas and attitudes towards resource management. She did not believe that there was a particularly good turnout from Māori during that process, and accordingly the legislation did not particularly reflect their aspirations. She felt that it was a vocal minority that she dealt with during the consultation phase, and the reason for the small number of participants was a reflection of the earlier Town and Country Planning Act, which did not engage with many Māori; it had only one section[1] pertaining to 'ancestral lands.' Māori were unaccustomed to being involved with the matters being included in the draft law, and so were unaware of its long term implications for tāngata whenua. Kapua stated, "My one observation about that time is that Māori weren't ready and I don't think had even really considered the implications of their role under the Resource Management Act." This comment was echoed by several other informants, who pointed out that it was not just Māori who had not thought much about their role in resource management but the wider community as well.

[1]Town and Country Planning Act 1977 Section 3 (1)(g) stated that the relationship of the Māori people and their culture with their ancestral land is a matter of national importance.

8.4 Broader Intentions Behind the Resource Management Act

Informants felt there was a widespread political awareness that the inclusion of Māori interests in the RMA was unavoidable. The political climate demanded that they were considered and incorporated into the Act. The government had recognised that they had to protect Māori interests in law and there was an equal, or greater, push from Māori to ensure that they did. As Church says, "The picture we were presented with was that of Māori having a highly constrained voice in the formal processes as they were at the time." A primary objective of the RMA was to provide Māori with a statutory right to be consulted on issues that directly affected them, and also recognised and gave weight to their cultural values. Jones recalls:

> *There were no opportunities for Māori to argue their corner because the law didn't specifically refer to their rights... we knew that we had to deliberately include Māori terms, distinctive obligations from the governance level (ie., regional, local government) to tāngata whenua by giving them status in law.*
>
> (Jones, 2009)

To ensure that Māori were well-served by the Act, Jones and his team of advisors worked very deliberately and strategically to "pepper the Resource Management Act with a range of references, a range of participation, rights, governance, obligations et cetera." This careful placement of references throughout the Act passed through with some clever maneuvering on Jones' behalf, as Gow recounts, and he managed to get in a lot of unnoticed "hooks" written into it, some of which Gow believes are "time bombs" still waiting to be discovered and tested in court.

The Act was designed to enable active public participation in resource management planning, seeking to make participation accessible to those voices which might not usually be heeded or well-regarded in decision-making processes. Church explains that "there was an expectation that new legislation would mandate and legitimise a variety of perspectives that had had trouble getting onto the table." Salmon believes that there were a range of intentions behind the inclusion of the Māori worldview in the Act:

> *Some saw as it as a question of inclusion. Others had this feeling that resources had been dominated by a pretty single-minded Pākehā land clearing and developing ethos... there was a certain loss of confidence that that was the whole and best way of looking at the world.*

(Salmon, 2010)

It is clear that there was a growing awareness and willingness to explore alternative ways to practice resource management that were influenced by both internal and external sources. The RMA's provisions for Māori were a response to pressures coming from Māori, the government and a changing public perception of the value of Māori approaches to environmental management.

Edward Ellison, a Ngāi Tahu leader from Ōtākou, sincerely believes that the RMA was designed with genuine regard for the recognition of Māori rights:

> *I think the intentions were absolutely right and deliberate... they were right on the nail, in terms of the big issues that were being raised – the Land March and all of those things. Absolutely, [coming from] the world movement at that time and then the Treaty process.*
>
> (Ellison, 2010)

He considers that the RMA is a good reflection of the environment in which it was designed, and offers a lot of potential for greater participation by Māori in resource management, but ultimately, has yet to deliver on its promise to Māori.

Many respondents drew attention to the fact that the implementation of the RMA had been a far from smooth path due to the devolution of power from central to local government. They readily identified under-resourcing of the implementation phase as a primary reason for the slow uptake of these provisions. Devolution was a main principle of the RMA, which was not without controversy. Gow says it was considered to be an acceptable alternative to the privatisation of resources, which the RMLR and review groups wanted to avoid. Salmon always had reservations about devolving everything to councils. He says now that he did not realise then how radical the devolution was going to be, and that if he had known how monocultural the councils were going to be in terms of excluding both Māori and green perspectives, he probably would not have supported the relocation of power to local authorities. Salmon believes that it was the greatest problem with the Act: "I don't see a problem so much with the statute; I see it with the devolution that accompanied the statute." His impression is that local authorities' ability to perform to the standards required by the RMA is limited in many areas and often poorly supported where there are difficulties. He believes that one way of improving their performance would be to set national standards, which would provide guidance and a gauge from which to assess progress.

8.5 Intentions Behind Section 33 Transfers of Power

Many of the informants did not recall discussion on the crafting of Section 33 or whether its inclusion was a matter of debate and discussion. It appears to have been a far from controversial inclusion as nobody could really remember a great deal about its origins or how it came to pass. Kapua suggested that there were some iwi aspirations about control of resources, but ultimately she does not believe that these were the real impetus behind the creation of Section 33. In contrast, Woollaston does not recall when Section 33 came into being, but he remembers it as a result of awareness "raised about things that were properly done by Māori for Māori."

Other informants had a better recollection of the reasons behind its inclusion. Lindsay Gow reports that:

> *[It] was built again on the premise that if you wanted Māori participation and if you like ownership – not the property, but the idea sense of the issue – then it made sense to be able to transfer certain decisions where that was sensible. Bear in mind that you are dealing with often large areas of land or other resources that are in common ownership and so on. Why not let those people, within the boundaries of the policies that had been set generally, make their own decisions? To me, that seems a perfectly sensible idea.*
>
> (Gow, 2010)

This idea of ownership and decision-making is echoed by Kapua who describes Section 33 as, "a tool, or a mechanism, by which they could essentially exercise their own rangatiratanga in terms of their own recognised resource, and make the decisions, as to how it was going to be used." It appears that those involved in drafting the mechanism were genuinely progressive in their attitudes towards Māori aspirations and sought to enable Māori to exercise tino ranagatiratanga within prescribed circumstances. The fact that there was not much in the way of opposition to the inclusion of the transfer of power mechanism may explain why it entered into the legislation in a relatively undeveloped state.

Salmon cannot recall any controversy about the inclusion of Section 33. He believes that those who had concerns or suspicions about its inclusion did not feel strongly enough to object as they did not think that they would have to use it in any case. As it transpires, they were correct in this assumption, and possibly had a greater sense of the local authorities' lack of enthusiasm for entering into shared decision-making arrangements with Māori. Nonethe-

less, in Salmon's opinion, the inclusion of transfers of power, which could be transferred to an iwi authority, was an idea whose "time had come."

8.6 The Implementation of Section 33

As an idea whose time had apparently arrived, it would seem that the rest of the world is late to the party. As discussed in Chapter Seven, the survey revealed that there had been no uses of a transfer of power to iwi over the 19 years since the implementation of the RMA. Transfers of power have, however, been used on a number of other occasions, whereby councils have transferred powers to another council or agency. Kapua voices frustration that councils would, "readily devolve powers to an officer, or..., but yet, it is too hard for councils to consider doing the same with an iwi authority." Nearly all of the informants were in agreement as to why this was the case. Despite the promise of transfers of power, they consider councils are too afraid to relinquish some of their decision-making powers to Māori. The informants described a range of reasons for this, but they saw fear as being the primary factor inhibiting the uptake of Section 33.

Tremaine describes the councils' attitudes as "a combination of fear and loathing. I can't express it anymore bluntly. The fear of the unknown is based on ignorance and a lack of awareness of Māori values and working with Māori." Kapua says without reservation that Section 33 will not be used purely because "councils won't let go of their power." She continues on to assert that, "... it is an absolute control issue. You know, so they set up these little advisory committees for Māori to be there advising them about certain things – they will not let go of that decision making." This comment is reflected in the survey findings with memoranda of understanding and consultative agreements being much more common than any form of shared decision-making arrangements. As she says, the use of Section 33 is ultimately reliant on the council, and if they do not feel comfortable with the change in relationships that a transfer of power brings, it is unlikely that iwi will ever be able to convince them otherwise.

All of these informants, most having been involved in the development of the RMA, expressed disappointment and frustration with local government's resistance to using the transfer of power mechanism. Council hesitance about Māori involvement in resource management decision-making suggests that council-iwi relationships have yet to mature to a point of trust and genuine understanding. When questioned about the reasons to explain the poor uptake of Section 33, Gow stated:

If transfers haven't happened, it's again because decision makers who are local authorities, for reasons that we all know, don't have many Māori on them, if any in many cases. So the idea that Māori are not sort of some separate kind of species over here that you couldn't trust with anything is still around. So that's probably the principal reason.

(Gow, 2010)

With so few Māori in positions at local authorities, and such a perceived distance between the way iwi and councils operate, it is very difficult for local authorities to gain a sense of familiarity and feel comfortable walking in te Ao Māori, as Ellison explained. With this cultural uncertainty, councils find it hard to consider devolving powers to iwi.

Ellison, as a Ngāi Tahu kaitiaki, is in a good position to discuss the promise of Section 33 for Māori. He suggested that there has not been enough guidance for the devolution of power to iwi as of yet and at the moment it remains "an aspiration without knowledge of the implications." Ellison was not aware of his rūnanga having ever requested a transfer of power, so he did not have firsthand experience of investigating potential transfers of power in his iwi. He knew that in other areas that they had been on the agenda:

Different iwi and hapū have asked for those. My impression and memory of looking at some of those, not closely though – I haven't studied them, is that they haven't probably approached it in the way, technically, that you should.

(Ellison, 2010)

His knowledge of Ngāi Tahu's experiences with the RMA suggests that Section 33 is not well enough developed to make it feasible for iwi to consider as an option, and they generally seek out other forms of engagement to express their voice in resource management matters.

8.7 Implementation of Joint Management Agreements

The informants in these interviews were not involved with the design of the provisions for joint management agreements. They did, however, have interest in its application, and have been observing the response to them from councils and iwi. Kapua, Tremaine and Gow all expressed that they were all closely watching the changing political landscape with an eye to an increasing demand for councils to consider joint management agreements. They agreed

that joint management agreements offered a great deal of promise to iwi and councils, particularly as the terms of the agreement were more readily negotiable than those of a Section 33 transfer of power. Kapua summarised her feelings on the implementation of joint management agreements by stating, "I think that Māori have been exceptionally disappointed and poorly served by councils." She believes that there has been ample time for councils to come to terms with the idea of co-management, and that they are going to have to confront them in the very near future as more and more Treaty claims are settled.

8.8 Conclusion

The provisions for Māori in the RMA were believed by all informants to be genuine in their intentions to enable a more participatory framework and to give legislative weight to Māori values. Tremaine believes that the RMA is evidence that "we are further on than tokenism, I hope," but recognised, as did the other informants, that there still remains a great number of barriers to be crossed before the provisions for shared decision-making with Māori are fully embraced. Kapua feels that the provisions in the RMA:

> *... went beyond Māori aspirations at the time because there was a need, and it wasn't necessarily coming from Māori in the community, but there was recognition of the need to recognise the role of Māori and the importance of issues like the Treaty.*
>
> (Kapua, 2009)

Institutional fear of relinquishing full control and handing over some decision-making power to iwi was the most commonly cited reason for the lack of uptake of the provisions. As Salmon said, "regional councils are monocultural institutions that look down on Māori and don't want to know about them, don't really understand them." He explained that this was primarily because cultural awareness was not great amongst local government as "they just have no concept of the significance of the Treaty or legitimacy of the Māori view of things." Gow believed that the fear extended beyond the local authorities, with the wider Pākehā community also having reservations about sharing decision-making with Māori, as it was widely believed that "it will take their power away." Despite the good intentions behind the co-management provisions in the RMA, their implementation has a long way to go before their promise to give Māori greater decision-making powers in resource management is met.

Chapter 9

Institutional Bricolage in Action

9.1 Introduction

Cleaver suggests, "We cannot predict exactly how newly introduced arrangements will become revised, adapted and socially embedded over time, or abandoned and forgotten, through processes of institutional bricolage" (Cleaver, 2002, p. 29). 'Institutional bricolage' is understood here as the manner in which "mechanisms for resource management and collective action are borrowed or constructed from existing institutions, styles of thinking and sanctioned social relationships" (Cleaver, 2002, p. 16). As discussed in Chapter Five, this framework is useful to enhance the understanding of how such mechanisms are developed, looking at the different factors which influence their evolution, and then their subsequent use, adaptation and/or disuse. Bricolage also offers insights into institutional function, the agency of the different actors and informs constructivist approaches to negotiating indigenous participation in resource management planning.

This chapter will primarily utilise key informant interviews, but will be supplemented with a few select statements from the interviews conducted by Jonathan Dick for the *Tirohia he Huarahi* research programme. These interviews were with Māori who are active in mahinga kai management. They do not place a strong focus on the Resource Management Act itself, but discuss the experience they have as kaitiaki negotiating a world where lore and law are intertwined. The concept of institutional bricolage is used to understand the findings outlined in the preceding two chapters, to help identify how a range of different elements are combined to craft and negotiate co-management mechanisms.

9.2 Existing Legislative Structures and Norms

Although the RMA was considered to be groundbreaking legislation, the likes of which the world had not seen before, it drew on a number of existing legislative structures. These structures gave shape and form to the Act and some of their own attributes are noticeable in the resulting wording and intention of the RMA. Interview informants identified three different pieces of legislation that were considered influential in the creation of the RMA. The first was the Town and Country Planning Act 1977, which was the legislation that the RMA was to replace. It contained Section 3(1)(g) which referred to the 'ancestral relationship' Māori had with their land. This reference, which was only inserted in 1978, paved the way for greater recognition of Māori history and relationships to the land and resources in the RMA. The second influential statute was the State-Owned Enterprises Act (SOE) 1986, which stated that the Crown could do nothing "that is inconsistent with the principles of the Treaty of Waitangi." This also influenced the inclusion of Treaty references in other legislation prior to the RMA, including the Environment Act 1986 and the Conservation Act 1987. Shane Jones describes this period of time as one of a "constitutional narrative" which was based on Māori re-legitimising their rights under the Treaty. This legislation now afforded them legal opportunities to contest those rights at the Waitangi Tribunal, especially as the SOE Act had "breathed statutory life into the principles of the Treaty of Waitangi." Prue Kapua noted that the Waitangi Tribunal process was pivotal in creating awareness for many Māori of issues that they had lost touch with in the previous generations. The Tribunal also influenced legislation, with Justice Chilwell suggesting in 1987, that the 'Treaty is part of the fabric of New Zealand society' and that Māori cultural and spiritual values should be consideredwhen determining the general interests of the public (Durie, 1998, p. 182).

The third piece of legislation that shaped the RMA is the now-defunct Rūnanga Iwi Act 1990, which was intended to be a companion to the RMA. This Act was to allow groups like urban Māori authorities and hapū to apply for the Māori Land Court to be legally recognised as an "iwi authority," and working alongside the RMA to provide a legal and political framework for Māori participation. Shane Jones described how:

> *each tribe, with its Iwi Authority, was going to have devolved to it resources of the state. And, a percentage of that resource could be dedicated to ensuring that iwi were regular participants in statutory resource management and each iwi would be able to compile an iwi management plan, which would both distill and represent what the priorities within the area that that iwi was focused were, ie.*

> *which areas were of particular significance to them, which types of resources they felt needed to be managed particularly intensely, and which were available for any range of development.*
>
> (Jones, 2009)

Unfortunately, the idea of devolving resources to the Iwi Authorities was later dropped, as the Rūnanga Iwi Act was repealed, but the references to iwi authorities still remained in the RMA (PCE, 1998, p. 11). As Prue Kapua stated, it created "a little bit of a vacuum there, so in its initial stages it did have things that would carry though." It is evident that the people drafting the RMA legislation were influenced by these other statutes, and drew on these preceding statutes to give shape to the RMA in its final form.

The 1987 Brundtland Report on sustainable development was also considered by informants to be largely influential in changing the thinking around the approaches to environmental management. The RMA emerged as one expression of the new international direction for integrated resource management advocated by the Brundtland Report. It was not a source of structural borrowing, but provided some of the philosophical underpinnings of the Act.

The 2005 introduction of a provision for joint management agreements in the RMA stemmed from the recognition that the standing provisions for Māori lacked clarity and certainty for councils and iwi (Ministry for the Environment, 2005). Internationally, there was an increasing body of work on co-management with indigenous peoples which provided guidance and evidence of its successes and limitations. See for example: (Berkes *et al.*, 2000; Borrini-Feyerabend, 1996; Carlsson and Berkes, 2005; Natcher *et al.*, 2005). There was also growing awareness of the potential that co-management practices offered the New Zealand government in terms of meeting their obligations under the Treaty of Waitangi, and there was growing interest, particularly on conservation land, to implement co-management arrangements with Māori (Taiepa *et al.*, 2000).

Borrowing from previously enacted legislative structures is a common method used to craft new legislation. It draws on the successful elements of existing legislation and is shaped by what is already known to be possible. The use of familiar structures and procedures can help ensure an easy transition to their uptake and use; however, the RMA went a lot further than previous legislation to provide for Māori interests which may be part of the explanation for the slow uptake of the co-management provisions.

9.3 Organisational Structure

Organisational structure is an important factor in determining the successes of resource management processes. Such structures involve both formal and informal institutions, and as such, are interacted with in a variety of ways. Cleaver uses the terms 'bureaucratic' and 'socially-embedded' institutions to refer to these, but stresses that the two are not necessarily easily distinguishable from one another (Cleaver, 2002, p. 13). Institutional bricolage approaches borrow from existing formalised arrangements, which are based on explicit legal rights, organisational structures and contracts. Equally, elements are also taken from those socially-embedded institutions, which are based on culture, social organisation and daily practice (Cleaver, 2002). The development of the RMA provisions and their use borrow from both forms of institutions, some of which are described below.

Denise Church discusses the role of the then newly formed Ministry for the Environment as a strong factor in influencing the organisational structure of the RMA and how it was implemented. The newness of the Ministry created an environment which was willing to embrace a completely different approach and working culture, which was totally different to the institutional environment preceding it at the Ministry of Works and Development. Church strongly believes that none of the RMA would have been possible under their auspices. The RMA's new organisation structure imposed bureaucratic institutions, but also created new socially-embedded institutions which are evident in the working culture that Church described.

Philip Woollaston recognised the influences of the dominant Pākehā culture on the structures that the RMA created, and how those structures then impact on Māori:

> *It's an essentially Pākehā or post-colonial structure... you can philosophise about what sort of result you get actually from filtering the Māori voice through that. On the other hand, you say well, the Māori voice is always filtered through 150 or 200 or however many years of contact, and 170 years of the Treaty. You can't avoid that.*
>
> (Woollaston, 2010)

Māori are influenced strongly by non-Māori culture, having had to negotiate from their position of a minority in their own land. There is no doubt that Māori are accustomed to walking in both te Ao Māori and te Ao Pākehā, and it is difficult to discern where the influence of each cultural approach ends. Those Māori who are more adept at functioning in te Ao Pākehā

find negotiating their way through formal resource management processes much easier, as Prue Kapua explains:

> *You go through a process where it is part of an institution and you do end up with those who are more familiar with the institutions and processes being able to perhaps take advantage....but being able to use it more than others who perhaps in circumstances should maybe need something a little bit more.*
>
> (Kapua, 2009)

Equally, the consultation process did not necessarily suit Māori as:

> *It's a very formalised process... We're not good at that sort of thing. We've had lots of experiences of it not being something that comes out in our best interests at times, or being in a situation where people are polarised.*
>
> (Kapua, 2009)

The RMA has not been designed with Māori culture in mind, although it does incorporate some Māori language and concepts. Instead, it is a strongly based in Pākehā culture, which places a heavy emphasis on formalised processes, written documentation, individuality and Western time frames. Ken Tremaine describes this succinctly, stating that "We are a very regulated country," which can be challenging for people to negotiate when they are unfamiliar with the regulations and requirements.

One of the kaitiaki interviewed drew attention to the impacts of colonisation on Māori agency. She noted that collective action had been replaced by an emphasis on the individual, which is contrary to traditional Māori values, and she saw that colonisation had changed the way that Māori acted and interacted:

> *We need to release ourselves from our colonised institutionalised Western thinking back to our relationship way of thinking and then we will be able to get over ourselves and move towards what's best for the whenua, not what's best for me and you or this one or that one. It's what's best for the whenua first and if that's alright then we will all be alright.*
>
> (Kaitiaki A, 12 August 2009)

Retaining traditional values was seen as difficult as Māori are obliged to interact with the State, which requires Māori observing Western protocols and adapting or portraying values

and concepts in terms that can be understood by a Pākehā audience. The ability to function in both worlds is highly valued and recognised as crucial for success in modern day New Zealand. One of the kaitiaki interviewed stressed the importance of raising children who were able to stand strongly in both worlds without losing their Māori identity:

> *... we have to go that bit further to guarantee our mokopuna their birthright. So I think we need to create employment for them and opportunities so that they are free to move amongst and around and within mātauranga Māori and they're not dispossessed due to being on the poverty line and having to suffer in their quality of life... and that they deservedly are happy in their home environment and then their mātauranga is more accessible. I do believe that there's ways of bringing the Western side together because the kids live essentially on the Kahungunu coast within a Western paradigm but they're definitely in touch with their taha Māori, so I would love to see balance.*
>
> (Kaitiaki B, 9 June 2009)

The balance between the two worldviews is essential for Māori to have their interests met in the modern world. Tā Tipene O'Regan emphasised the need for Māori leadership to demonstrate this ability:

> *Māoridom is only emerging now, driven by the force of demography and population growth from a century and a half, or more now, of resistance and disadvantage. So the great challenge facing Māoridom now is the emergence of leaders who are competent in contemporary terms, who have an appropriate base within the tribal community, and cultural competence, and who are actually imparting or delivering some measure of vision about what might be and what the people want to be.*
>
> (O'Regan, 2009)

The process of institutional bricolage helps explain how leaders take materials and practices from a number of different sources to create new approaches and techniques to exercise their leadership successfully.

One kaitiaki described the act of having to straddle both cultures to achieve consensus and understanding on common goals:

> *That's part of our process that I've never formalised but I need to formalise it, is that we've taken it for granted that all decisions are made back in our marae, in*

our house, but just a couple of recent examples, we've learned that not everybody has that understanding and maybe it's something that we've got to put down as a policy. When it's iwi matters, that's where it must be discussed, that's where it must be dealt with.

(Kaitiaki C, 29 July, 2009)

This kaitiaki employed Western practices of writing down policy to ensure that everyone was able to share the same interpretation of it, and to clarify approaches in a way that could be readily understood by an outsider. Another kaitiaki described the tensions that having to operate in both te Ao Māori and te Ao Pākehā had on tribal organisation. She describes how negotiating between lore and law is a challenge when walking in two worlds:

...let's have a discussion about what our tikanga would require of us and then we fit the law around that you know, but we tend to go the other way and that's the internal battle I notice with particularly heading into post-governance settlement structures. Do we create ourselves to be little legal bodies or do we strive to maintain our tikanga values to have paramount authority over L-A-W. That's the other big thing we're facing at the moment because as we restructure ourselves, are we going to turn ourselves into little incorporations and companies that are all about the dollar, you know, or profit before people? If we ensure that our tikanga comes first and it comes people before profit and just in my little experience what I've noticed is when you, if you put what's right first the money will come.

(Kaitiaki A, 29 November 2009)

The balancing act between law and lore determines how Māori negotiate and navigate their way through the RMA's structures and processes, and it can be difficult to retain the desired balance between the two when having to operate within the RMA structures, to achieve long term objectives. Māori have to contemplate the use of Pākehā institutions to be able to succeed in te Ao Māori, despite the fact that many are trying to resurrect and strengthen tikanga Māori in their actions. Law and lore encompass elements of both bureaucratic and socially-embedded institutions, and the interplay between the two, and the way that individuals and communities engage with them is by necessity a site of institutional bricolage.

The survey results gave an insight into the current administrative structures of local government. It appears that they are not well developed or maintained, as very few councils

were able to recall their institutional history with any accuracy. Rennie *et al.* (2000, p. 25) found that councils had recorded 37 instances of iwi expressions of interest in a transfer of power, and eight formal applications from iwi for a transfer of power. In the ten years since this survey, it is apparent that records have not been well maintained. Only eleven approaches were recorded in this study's survey of councils, which demonstrates that administrative structures have not been successful in accurately documenting the details of iwi and hapū requests. It is important for there to be accurate record keeping as councils have transient staff, which means it is important to have solid, reliable and in depth records in lieu of permanent staff. The transient nature of council staff contrasts with Māori, who tend to have committed people working for their iwi, who are in lifelong contact with the issues. This affects relationships between iwi and councils:

> *Once you get the relationship right, then it becomes quite reciprocal and respectful and so I guess that's the danger of working with Crown agencies that change people all the time because you develop the relationship with the person, not with the organisation*
>
> (Kaitiaki A, 12 August 2009)

For Māori, relationships are critical in the ongoing success of co-management strategies and are ultimately more important that the resources themselves (Tipa, 2006, p. 162).

Organisational structure is determined by elements from both bureaucratic and socially-embedded institutions. Their forms and processes, whether it is a government department or an iwi committee, and the way that individuals and groups interact with them demonstrates the way that bricolage processes are evident at all levels of development and engagement with them.

9.4 Social Relationships

The concept of institutional bricolage places a heavy emphasis on the roles of social relationships in the success or failure of a resource management institution. It is the societal norms, the power structures, the relationships between individuals, agencies and the state, which ultimately determine the success of legislation and the mechanisms it creates (Cleaver, 2001; Hillman and Howitt, 2008). Throughout the creation and the response to the RMA and its provisions for Māori, there have been a whole range of different social structures and pro-

cesses at work, giving shape to and influencing the outcomes of how resource management is practiced.

The Treaty settlement process has helped iwi and hapū solidify their identity, especially from an outsider's perspective. Having to come together to push a claim forward as a unified body has helped shape their public identity, both within the community and also with local and national government. Having become more publicly embodied through the claims process, they are now seen as a much more approachable unit with easily identified boundaries. This has made local authorities more comfortable in their dealings with iwi and hapū, and made them more willing to engage on issues across the board. Edward Ellison reflected that Ngāi Tahu's active involvement with the Department of Conservation, the RMA, and the Ministry of Fisheries resulted in a change of attitudes:

> *They've come up and seen that engagement and there has been a growing, a huge acceptance, I believe, across those fields, universities and everywhere. So the settlement forced that change.*
>
> (Ellison, 2010)

He believes that the RMA has also been of immense benefit in the fostering of inter-tribal relationships:

> *We built up quite a good network and participation because this was all new. We had to talk to each other to give each other confidence that, "This is how you deal with this, this is what that means, this is what you should do." You know, "This is what we've done and it worked." Share those ideas so there is a lot of networking that went and then it slowly, as iwi took confidence in their own areas, just took over their engagement, so it has worked relatively well.*
>
> (Ellison, 2010)

Building these relationships between iwi demonstrates the strength that social bonds have in creating responses to and negotiating the use of the mechanisms in the RMA. Iwi are collaborating and sharing knowledge on how to interpret the legislation, and how they can best maintain their own values, whilst achieving their goals through the legal and political system imposed by the RMA.

Nearly all of the interview informants pinpointed local government fear of Māori as being the largest inhibiting factor in the uptake of the co-management provisions. This was

also echoed in the *Tirohia he Huarahi* interviews with kaitiaki. As Kaitiaki A stated, "It's just fear of loss of power and control at the end of the day… it always comes back to power and control and authority. Nobody wants to give it up." Margaret Mutu recognises this institutional fear of Māori, but couches it in the much stronger terms of racism. She asserts that racism is still deeply entrenched in local and central government, particularly against Māori (Mutu, 2010, p. 16). This is an attitude that is perpetuated throughout mainstream media , something that was apparent to external agencies, as noted by the UN's Special Rapporteur in his report on the rights of indigenous peoples in New Zealand (Stavenhagen, 2005, paragraphs 66 and 104). Consequentially, government agencies and developers "evade the clear statutory provisions which protect the role of Māori as kaitiaki" (Mutu, 2010, p. 16).

Prue Kapua offered an interesting insight about how individual council staff members who deal with resource management issues and planning can be pivotal in the success or failure for a co-management bid from iwi. In her work as an environmental lawyer for iwi, she has encountered, on a number of occasions, staff members who are not of New Zealand descent holding positions which require active engagement with tāngata whenua. She believes that these individuals, whether unwittingly or not, who may hold high levels of decision making power, can actively block shared power decision making with iwi as a result of limited cultural understanding. Their lack of experience in working in bicultural environments and Treaty obligations to Māori can be the final hurdle at which co-management agreements fall.

Institutional bricolage draws extensively on existing social relationships and social norms. These define the power structures that are in place at different scales and determine the success of the RMA and its mechanisms of co-management, for as a number of survey and interview informants stated, relationships are more important than the legislation itself. The interview informants and survey responses also indicated the wide range of social relationships which informed the ways in which individuals, agencies and the state interact to negotiate the management of resources.

9.5 Cross-Cultural Borrowing

Cross-cultural borrowing, one of the elements that Cleaver (2001, 2002) identifies as an integral part of the bricoleur's work, is a strong feature of the RMA, with the Act being the first piece of legislation which attempted to infuse Māori cultural values into its structure. Prue Kapua recognised this, stating that although the legislation attempts "to recognise the

bi-cultural nature," the councils "don't understand" Māori culture sufficiently to implement the legislation effectively and to do the bi-cultural provisions justice.

The RMA has captured the changing attitudes in New Zealand at the time that saw increasing awareness and familiarity with Māori beliefs, values and practices. Māori language was starting to enter into the public discourse. Philip Woollaston recalls learning some basic te reo Māori from his children who were being taught it at their primary school. The Treaty claims process was also pushing Māori language and concepts into the public arena, many of which were beginning to seep into Pākehā consciousness. Guy Salmon recounts there was a:

> *... rethinking of the dominant Pākehā worldview. So there was a feeling that there was something to learn from other cultures – that we were being too narrow and monolithic in our way of looking at resources.*
>
> (Salmon, 2010)

This reconsideration of worldviews was apparent in the political realm, as evident by Guy Salmon's description of the National Party's approach before the 1990 election:

> *They had the slogan, 'The Decent Society,' which everyone sneered at later, of course... but at the time, they were trying to sound like middle-New Zealand, totally reasonable, totally decent middle of the road, so they were open to all this Māori stuff! They were open to all this green stuff!*
>
> (Salmon, 2010)

Māori (and environmental) values were becoming more widely promoted and the dominant culture was beginning to show signs of adopting a more ready approach to consider their merits and take on board aspects that fitted in with their values. This process of cultural bricolage is not just evident in the RMA legislation, but has subsequently infused through almost all parts of New Zealand society.

Edward Ellison is firmly of the belief that Māori bring a valuable contribution to resource management thinking and practice:

> *That diversity adds value to the way that you may appreciate and apply management practices... I think that the Māori voice is a very good, for want of a better word, force in the process... they affect change, it brings an improvement to the processes.*
>
> (Ellison, 2010)

This strength of diversity was recognised by a number of interview informants, who are adamant that different approaches to resource management from the dominant paradigm will be required if we are to truly manage our environment and resources sustainably. As one kaitiaki explained:

> *Your ways aren't working. There's no more options, give us a go. What could you lose? You've got everything to gain, and I think once we share with people we've got to really hold fast to those values of manaakitanga, whanaungatanga, and aroha and when we operate in those values, you when hearts, you win hearts and it's about winning hearts. It's about reaching out in love, not in conflict, reaching out to create a relationship of trust and honesty, you know, once you've got a relationship with someone it's really hard to say no and it's really hard to not respect each other when you like each other and you want to honour each other because you like each other. So it's about creating the relationship first.*
>
> (Kaitiaki A, 29 November 2009)

Genuine relationships between Māori and non-Māori individuals, agencies and structures are essential to ensure that the provisions in the RMA are used, and that these relationships are fostered for the benefit of the environment (Tipa and Welch, 2006). There is a growing acknowledgement that Māori participation will help confront the problems of resource degradation and depletion. Edward Ellison points out that in his opinion, the value of Māori participation is that it raises environmental standards regardless of who else is involved:

> *At least there is a semblance of understanding the problem that iwi must be involved. My observation is that when iwi are involved in and are passionate about a thing, they'll always lift the standards and outcome because their values and the importance of clean water is higher than Fish and Games, or even Forest and Bird, whoever, you know? So that's the importance, I believe, of iwi. At the end of the day, their standards will always drive higher.*
>
> (Ellison, 2010)

Sharing cultural knowledge and practices has the benefit of improving each party's understanding of the environment through new perspectives and strengthens practice through shared experience.

Cultural values and practices are an important source of bricolage borrowings. Cross-cultural dimensions are present throughout all aspects of the RMA and its implementation

due to the bi-cultural nature of New Zealand. It was widely recognised by interview informants that cross-cultural borrowing strengthened resource management practice through both its environmental and social impacts. The RMA borrows Māori concepts of environmental stewardship and recognises Māori relationships with the land and its resources. However, there are no real provisions for the expression of Māori culture that are not filtered through the dominant structures and processes of te Ao Pākehā. The cultural borrowings of the RMA heavily favour non-Māori, and those elements taken from te Ao Māori are often not well understood by councils, which is a contributing factor to the challenges in ensuring effective Māori participation in resource management.

9.6 Implementation of the Resource Management Act

The transition phase, which has been identified as being critical in the success of a new resource management regime (Agyeman and Evans, 2004), has evidently been a struggle in the implementation of the RMA. Both Māori and local government have taken time to understand the implications of the Act and how to effectively engage with it to get the best results. Prue Kapua attributes the Māori transition to the new resource management regime as part of a larger movement which was based on the Treaty settlements:

> *Māori weren't ready and I don't think had even really considered the implications of their role under the Resource Management Act... I actually think that now, 18 years on, there is a completely different view for Māori and I think that that different view has come about because of the Treaty settlements issue.*
>
> (Kapua, 2009)

The influences from the Treaty claims process have done much to strengthen Māori capacity and ability to realistically engage with the RMA. Edward Ellison identified what he believes is the key reason that Māori took so long to get up to speed with the RMA, "You've got to understand they were talking about legislation and we hadn't been introduced to policy, even at that stage!" Operating in the legal and legislative spheres was new territory for many Māori and it took time and practical experience for the knowledge and understanding to be built to engage with the legislation effectively.

Māori were not the only ones who were slow to embrace the RMA and its provisions. Local government was described by Sir Geoffrey Palmer as being under-resourced and poorly planned. He noted that New Zealand political culture was a culprit: "We have

a habit in New Zealand of passing ambitious statues but not resource the implementation sufficiently." Local government was largely unprepared for the transition for the reason that Shane Jones explained:

> *We failed to include much of anything in the actual machinery of creating local government, but insofar as local government was implementing the Resource Management Act, indirectly we ended up imposing obligations on local government which had a pretty tawdry reputation in the eyes of a lot of Māori landowners and authorities.*
>
> (Jones, 2009)

As Cleaver (2002) noted, sanctioned relationships have a considerable impact on the use of resource management mechanisms. Relationships need to be developed and trust is only established over time (Robbins, 2000). Local government struggled initially to engage with Māori issues as:

> *There was no well developed practice amongst local government of building relationships with iwi – so that wasn't to say there were none, but it wasn't well developed and it wasn't consistent.*
>
> (Church, 2009)

The difference in institutional culture was noted between existing council structures and those that had been recently introduced with the local government reform in 1989. Māori interests were much better received in the new institutions as a kaitiaki described:

> *the district councils of the old borough councils were developed or created under a regime where there's no consideration to things Māori so that still lingers in the councils. You still have that mindset it seems. It's like an institutionalised thing whereas you'll find regional councils are brilliant because they were born out of the RMA, which required them to give accord to things Māori so from the outset they have been open and embracing things Māori. That's part of their institutionalised philosophy.*
>
> (Kaitiaki A, 29 November 2009)

The transition phase into the RMA was not particularly smooth or quick. It closely resembled Hillman and Howitt's description of the transition period between resource management regimes as "a blend of hope, expectation, frustration, inertia, misunderstanding and

resistance" (Hillman and Howitt, 2008, p. 56).The use of the institutional bricolage concept helps interpret the implementation of the RMA through the identification of the different elements at play which have been used to create the structures and processes, but also the socially-embedded institutions through which actors navigate them.

9.7 Māori Engagement with Councils

Māori engagement with councils is affected by many different factors. Social relationships are seen as of the utmost importance (Tipa and Welch, 2006), and organisational structures have the potential to enable or inhibit effective participation by Māori. Institutional bricolage places an emphasis on the importance of experience in negotiating resource management mechanisms. Previous experience informs and enables actors to draw on their prior skills and knowledge to more readily adapt and interpret situations. Where there are significant departures from previous structures and processes, the lack of prior experience can prove to make transitional phases challenging. The transition to local government as key environmental decision-makers was a significant change from the former resource management regime, and without adequate support, has not always been as effective as hoped by the government.

Ken Tremaine believes that progress is slowly being made through the regional councils, as they encounter and become familiar with the values of local Māori and as Māori are able to deal more closely with natural resource accountability. Lindsay Gow believes that regional councils have been remarkably successful in their work, yet Sir Geoffrey Palmer still retains reservations about their structures today:

> *Some of them have been really hopeless, and one of the difficulties of this statute is that they have to be up to it, but if you don't have local authorities doing it, then who else? That was the big policy decision to sort of trust them to do this.*
>
> (Palmer, 2009)

Treaty settlements are seen as a key catalyst for change by councils. They appear unwilling to engage with Māori on matters of co-management until their claims have been settled. In places where claims have been settled, iwi seem to move more quickly to establish relationships with councils to cement their place in the local political landscape. As a prime example of a post-Treaty settlement, Ngāi Tahu demonstrates a significant level of progress since signing the Ngāi Tahu Claims Settlement Act in 1998. With their rohe covering most of the South Island, Ngāi Tahu have formalised relationships with nine out of

nineteen councils who fit into their rohe. Ngāi Tahu's highly organised engagement with resource management issues demonstrates their ability to piece together different elements in an institutional bricolage approach. An example is Te Ao Marama, a business unit serving the interests of tāngata whenua in resource management issues in the Murihiku rohe. This rohe corresponds roughly to that of the Southland region, which encompasses four local authorities: Invercargill City Council, Southland District Council, Gore District Council and Environment Southland. The relationship between these four bodies and Ngā iTahu is governed by a charter of understanding, and Te Ao Marama provides liaison between resource consent applicants and the various rūnanga in the rohe. All survey respondents from these local bodies were appeared to be familiar with their established relationships with tāngata whenua and were looking to further strengthen these ties through decision-making roles for tāngata whenua. Ngāi Tahu have adopted a pragmatic approach through creating an agency which works alongside local council using structures and procedures that are familiar and designed to work effectively in te Ao Pākehā. This approach is a clear demonstration of Ngāi Tahu's ability to employ cross-cultural practices and to develop an organisational structure that can operate successfully in both cultural realms.

The Thames-Coromandel District Council survey respondent raised the issue that they were currently facing with twelve iwi groups all claiming mana whenua status over the same land. This has been problematic for the Council as relationships with both the iwi that they had signed an MoU with, and the other eleven iwi groups were deteriorating. The respondent expressed hope that the joint claim for these mana whenua groups would create a sense of cohesion amongst them, and thus make the council's job much simpler in trying to develop and maintain relationships with them all.

The establishment of different co-management arrangements in New Zealand demonstrates the relevance of Berkes' (1991) co-management typology. To place the two co-management provisions in the RMA into his scale, a joint management agreement would probably be designated a "partnership" and a Section 33 transfer of power would sit one rung higher at the "delegated power" level (Berkes *et al.*, 1991). The transfer of power could still be considered co-management, however, as a resource will generally sit inside other areas under council jurisdiction, and national environmental standards which set delimitations on exactly how much autonomy the iwi authority has in the management of the resource. The provision of these mechanisms in the RMA is an institutional attempt at crafting a formalised opportunity to enact participatory resource management practices.

9.8 Alternatives to Section 33 and Joint Management Agreements

The establishment of more co-management agreements outside of the RMA indicates that transfers of power and joint management agreements are either not very accessible or appealing to councils and iwi. The creation of these alternative arrangements is a demonstration of institutional bricolage in action, whereby a range of different elements from socially-embedded and bureaucratic institutions are combined to make alternative mechanisms for resource management. They employ different organisational and legislative structures, cross-cultural borrowings, and social relationships to create new mechanisms which are designed to meet a specific context.

It is apparent there is a large gap between the initial intentions of the RMA co-management provisions and their implementation, as there is only one confirmed use of a joint management agreement. However, respondents to the council survey listed a number of alternative co-management arrangements that they had established with iwi and hapū. As the respondent from the Kaikoura District Council pointed out, "The RMA outlines [a] very formal process and there is more than one way of achieving shared management than what the legislation allows for." This may be true, however, the survey results suggest that very few of these alternative management arrangements that have developed outside the RMA actually share decision-making powers.

Twenty of the councils surveyed stated that they had memoranda of understanding with local iwi and hapū. These are a common tool used to formalise relationships and to set out guidelines for interaction. Their use has been encouraged by the Waitangi Tribunal, however kaitiaki recognise their limitations:

> *Taranaki Regional Council... as an outcome of the Deed of Settlement protocols with local government, there's an urging to have MoU between iwi and local government...What we found is that all those MoUs or relationship documents were one-dimensional in favour of local governments. I can recall and so does the CEO of Taranaki Regional Council me throwing that MoU back at him and I said that, 'We need a proper partnership document.'*
>
> (Kaitiaki D, 14 November 2009)

Māori are aware that MoUs do not give them many rights as a true partner with local government, but realise that they potentially set the scene for closer relationships out of which

co-management agreements may eventually emerge. Prue Kapua does not believe they offer very much to iwi, but acknowledged that, "at least, I suppose, they are making an effort in that regard." Most MoUs would be placed at the lower end of Berkes' co-management scale, sitting somewhere between 'consultation' (where Māori input is sought, but not necessarily heeded), 'co-operation' (where Māori have some say in management) and 'communication' (two-way information exchange, where Māori interests are provided for in management plans), depending on the level of decision-making permitted by the agreement. Occasionally an MoU might provide for the establishment of an 'advisory committee,' which establishes partnership in decision-making, but the committee makes recommendations rather than makes decisions (Berkes *et al.*, 1991; Berkes, 1994).

As discussed in Chapter Seven, councils in the survey reported seventeen co-management agreements that did not fall under the RMA mechanisms. From the responses it was difficult to gauge how extensive the co-management components were in sharing decision-making powers. One example that was clearly explained, was the co-management agreement that Ngāti Pahauwera has with the Hawkes Bay Regional Council to manage gravel extraction from the Mohaka River. This is currently entails a member of Ngāti Pahauwera liaising with the council to determine the sustainable allocation of gravel, deciding on the location of extraction sites and the monitoring of the sites. A kaitiaki from Ngāti Pahauwera stated that they were aiming for "control over the allocation of gravel and that's going to be part of co-management." The iwi had a good relationship with the Regional Planning committee and were optimistic that they would ultimately be able to push for 'co-governance,' which would give Māori much greater decision-making powers. He noted that there was some reluctance on behalf of the Planning Committee amongst individuals, but was confident that given time, they would develop the relationship to the point where co-governance would be possible.

The single joint management agreement that has been established under Section 36 of the RMA is quite limited in its scope. Natalie Coates describes the Taupō District Council's agreement as having "limited actual power sharing" (Coates, 2009, p. 9). The agreement only applies to resource consents and plan changes that affect multiply owned Māori land. It addition, it is only optional for applications to be heard by the joint committee comprised of the council and the iwi authority.This means that the agreement is only likely to be used when the applicant considers that it will be beneficial to have the iwi authority as part of the administrative process. However, the effect of the joint management agreement appears to be prompting further investigations in the surrounding regions to assess the potential of co-management agreements. The Taupō District Council is in the process of establishing another one, which suggests that the willingness to engage in co-management hinges strongly

on prior familiarity and experience with them. This agreement would be situated at the upper end of Berkes' co-management typology (Berkes *et al.*, 1991; Berkes, 1994), probably under 'partnerships/community control' as the Trust Board shares equal decision-making rights with the Council on the joint committee; however, this agreement is very limited in its application.

The establishment of a range of different types of co-management arrangements between Māori and councils span the breadth of Berkes' co-management framework (Berkes *et al.*, 1991; Berkes, 1994). These examples provide evidence of institutional bricolage in action, where actors seek to create context-specific solutions drawing on previous experiences, knowledge and practices.

9.9 The Future of Co-Management in Aotearoa

The survey and interviews revealed a range of perspectives on the future of co-management with Māori in Aotearoa. The concept of institutional bricolage suggests that the experience to date with co-management will be used and adapted for future arrangements. Successful co-management will take institutional elements from those existing examples to craft context-specific arrangements from their legislative and organisational structures and processes. It is evident from the survey responses that councils are already looking to other councils' attempts and learning from their experiences.

Lindsay Gow predicted that there is going to be a rush on co-management agreements by iwi. Now that there is one joint management agreement under the RMA in existence, there is going to be a "re-visioning of the entire structure of decision making." However, he believes that these will not necessarily be expressed through the provisions in the RMA, rather they will look like, "Section 33 management, by a different route." Ken Tremaine agrees that co-management agreements are the future of iwi relationships with local government. He cannot understand why it has taken so long for any co-management agreements to be established, particularly as the RMA provisions have been in existence for nearly two decades:

> *But those are models that really, we should have been working towards because we wrote into the RMA the ability for councils to devolved significant amounts of resource management to Māori.*
>
> (Tremaine, 2009)

Tremaine sees the move towards co-governance as a really big sea change, borne out by political movements. He draws attention to the current National government who rely on their coalition partner, the Māori Party, to stay in power. He believes that the Māori Party influence will speed up the process somewhat as it is politically expedient for the government to ensure continued support from the Māori Party.

Māori are looking to secure greater decision-making rights in resource management processes. Currently, their voices are generally limited to consultation and some input into decision-making, but ultimately the power is retained by local government.

> *Alternative options to co-management, options to give us governance rights - it's governance because that's where the power is at and the governance bodies. So it's all very nice to have management rights, but whose decisions are you managing, you know? We've got to be in on the decision-making level and that's governance so it's about getting the seats on those governance bodies whether it be DoC, whether it be with the district or the regional councils, yeah, you've got to get in at the start.*
>
> (Kaitiaki A, 29 November 2009)

There is growing pressure from Māori to have their rights under the Treaty recognised, to be able to work in a genuine partnership with councils. It seems likely that as Treaty claims are settled, there will be more and more support and impetus for this to happen.

Upon being queried whether or not Aotearoa would see the full effect of the RMA's original intentions for devolvement of power to Māori to manage resources, Lindsay Gow commented:

> *I don't think you'll ever have it, whatever it is, because it unfolds and changes as you go and so – that's good, I think. I think the concept was the right one, as we seem to have established in this conversation and its growth and development is now happening. It's not happening perhaps quickly enough and I can think of lots of examples where it could happen more effectively and more quickly. But it is going to happen, I think the wider political environment we're now in is actually going to help that for the first time in a while.*
>
> (Gow, 2010)

Gow is conscious that institutions change and evolve, and that the institutional design process

should be more aware of this and cater for periodic reviews to assess their function and effectiveness.

As new approaches to co-management emerge through processes of institutional reform and development, it is anticipated that "newly introduced bureaucratic arrangements... [will] complement or reinforce the positive aspects of socially embedded arrangements" (Cleaver, 2002, p. 28). Even if a conscious use of institutional bricolage approaches is not adopted, co-management agreements which are yet to be established will show evidence of bricolagic borrowings due to the wide ranges of influences on the creation of new resource management mechanisms and institutions.

9.10 Conditions for Co-Management

For co-management mechanisms to be successful, informants from both the survey and the interview identified a range of conditions that would enable the establishment and implementation of co-management arrangements. These conditions require that bureaucratic and socially-embedded institutions are well-matched and reinforce one another, as suggested by Cleaver (2002).

From the experience of implementing the RMA and the use of other forms of co-management, it is obvious that there has not been a great deal of support to foster co-management relationship with Māori. Philip Woollaston outlines what he believes are the conditions that would enable a greater implementation of the RMA's provisions for co-management; these conditions can also be extended to co-management agreements which stand outside of the RMA:

> *You need some specific pre-conditions First of all, you need to have informed, resourced and empowered iwi and a reasonably liberal and confident council institution dealing with them. Then it will work in relation to clearly defined and agreed issues, well defined in terms of content, statutory context and geographical extent If the boundaries (either physical or statutory) are fuzzy, I think you are bound to strike trouble sooner or later And it will only last as long as you have the right people driving it If you have a change of government policy or a change of local government, it can all fall apart.*
>
> (Woollaston, 2010)

Sir Geoffrey Palmer also has similar advice for the establishment of co-management arrangements:

> *I think it might be improved a great deal by trying to help the local authorities meet what are fairly formidable obligations that they don't often have the technical resources to meet I think there has been a manifest reluctance by central government to resource the questions of policy and regulation that the statute provides for policy direction would have helped a lot of authorities in a lot of areas, had it been done.*
>
> (Palmer, 2009)

The lack of policy direction and support from central government to guide councils and iwi has been one of the main challenges for the implementation of all of the Māori provisions in the RMA, not just those that pertain to co-management (PCE, 1998). Philip Woollaston had one final word of warning regarding co-management, "It is more difficult to achieve the higher the stakes are, and the stakes for either party." He anticipated that co-management would remain on a smaller scale than most Māori would like, although it was due to become a more prominent feature of the political landscape.

In order to create and implement effective co-management mechanisms it will be necessary to find a balance between innovation and adhering to existing pathways forco-management. Currently, as there are very few co-management agreements with any real power-sharing, it appears that there is a need to test some new mechanismsthat would allow a more generous degree of decision-making. New institutions, especially those of a social nature, may be required to move co-management practice beyond what is currently being implemented in New Zealand.

9.11 Using an Institutional Bricolage Approach in Legislation Design

A common theme emerged through the interviews and survey that institutional bricolage processes were favoured by all respondents, no matter what their background and experience. Informants did not use the term 'bricolage' in their discussions of legislative design, but the underlying concepts of institutional bricolage were present in their commentary. It was apparent to all informants that legislation needs to be tested in practice, and then be allowed

to evolve and develop over time to adapt and suit different contexts.

Both Lindsay Gow and Ken Tremaine were of the opinion that the creation of effective resource management institutions required time, testing, development and evolution of concepts and practices. As Gow pragmatically stated:

> *One of the problems is that a lot of clever, liberal academics... who get carried away with sort of terrible wonderful dream-state sort of concepts about this and you can only do it by practice. You've got to take these things, a piece at a time, try them out, see how they work, evolve the experience, shared it around, do some more and so on.*
>
> (Gow, 2010)

Gow and Tremaine stated that they tend to favour an evolutionary design approach which recognises that legislation does not stand alone – it stands shoulder to shoulder with society, culture, other legislation, and of course, political will.

> *So it isn't about the past, it's about the future and recognising important aspects of indigenous identity, that you have to blend into institutions right across the board, of which resource management is but one.*
>
> (Gow, 2010)

But ultimately, as Ken Tremaine points out, legislation alone is not the entire solution in achieving good environmental outcomes:

> *I find it hard because at one level you need legislation to guarantee rights, to have a dialogue, one the other hand, yes, there can never be more than a framework. And perhaps a... safety net is the wrong word, but the law will prescribe outcomes and sometimes they will be delivered on... and sometimes they will be delivered on really badly.*
>
> (Tremaine, 2010)

The differences in co-management outcomes demonstrates the way that different agents can interpret and use legislation in a manner which is not always in line with the original intentions (Sehring, 2009). As evidence of this, the one joint management agreement under the RMA does not fulfil the intentions of providing Māori with a vehicle to exercise rangatiratanga over land. Instead, the decision-making powers are limited to those occasions when

the applicant decides it is in their interest to have a joint panel hear their application, and the iwi still only has equal decision-making rights over their own land.

Kaitiaki also approach the use and development of resource management institutions from a similar perspective. A kaitiaki described the process of creating an iwi management plan through the forging of:

> *... bits and pieces of what could be termed as, could be part of a coastal management plan, part of an environmental plan, but nothing really around the country that we could hang our hat on and say, 'Oh here's a good example.' A lot of the planning work we saw were part of environmental plans, so you had philosophies of the Department of Conservation in there, you had local governments, you had all sorts of things so we had to say, 'Oh, develop what our own needs are.'... [Drawing on the advice of] the good policy writers, plus some of our own guys and the whanau that we had was mainly our marae and hapū. We said to them, 'How did sustainability happen in your day?' and we made sure that those philosophies or values permeated the whole document and actually drives the document, yeah, but we didn't find many helpful examples around the country.*
>
> (Kaitiaki D, 14 November 2009)

This is a clear demonstration of intentional bricolage in action. The iwi deliberately sought inspiration and guidance from other structures, agencies and individuals to craft their own plan, as even though iwi management plans are referred to in the RMA, they are not defined there in any sense.

In discussing the design of resource management mechanisms for co-management, Linder and Peters pointed out, "design will require conscious efforts at changing the cultural as well as ideational elements of the institution as well as its structural elements" (Linder and Peters, 1995, p. 133). The results of the design process are also subject to evolution and adaptation through processes of institutional bricolage, which recognise the importance of socially-embedded institutions in the success of co-management mechanisms. The contributions taken from socially-embedded institions are an aspect which is often overlooked as it is difficult to gauge the influence of such unmeasurable factors.

9.12 Conclusion

The interviews and survey revealed that many elements of institutional bricolage were evident in the design and implementation of the RMA's co-management enabling mechanisms. These included borrowings from existing legislation, organisational structures at all levels, elements of cross-cultural borrowing, and social norms and relationships. These borrowings resulted in socially-embedded and bureaucratic institutions which influenced the success of co-management development and implementation.

Intentional institutional bricolage is used in the implementation by councils and iwi to negotiate co-management agreements for resource management. However, apart from the minor adjustments made to Section 33, transfers of power regarding the clarification of liability, and the introduction of joint management agreements in 2005, the co-management provisions have not been subject to development. The manner in which government, councils, iwi and individuals engage with co-management or relationship-building demonstrate high levels of institutional bricolage, some deliberately, but more often unintentionally through influences and circumstantial need.

There is frequently a lack of capacity on behalf of both government and the indigenous community involved to negotiate a suitable path which meets both parties' expectations of participation. With limited guidance or advocacy from central government, transfers of power have not been well developed and as such, will not become readily integrated into resource management practice. Joint management agreements are more open to negotiation from both signatory parties, so there will hopefully be greater use of these more flexible arrangements in the future. Currently, councils and iwi feel constrained by the limitations of transfers of power and joint management agreements, which suggest that they are not readily adapted to fit many situations. Instead, the provisions would be better to be more loosely defined, allowing a greater range of interpretation and application in practice. At the same time, the alternative approaches to co-management should be fostered and allowed to evolve alongside the RMA's mechanisms, permitting the processes of intentional bricolagic borrowing to develop each set of co-management arrangements through reciprocal learning. The resulting relationships, practices, norms and structures may be quite different in each example of co-management as there is no set path to shared decision-making for Māori and councils. To achieve this will take a much more flexible approach, which employs a bricolage approach to take the most successful elements of institutions to create the most effective mechanism for each specific context.

Chapter 10

Conclusion

10.1 Introduction

This research investigated the intentions behind the Crown's introductions of Section 33 transfers of power and Section 36B-E joint management agreements under the Resource Management Act 1991. The survey of the uptake of these mechanisms by local government-found that even after 19 years of time Section 33 had been unused and after five years only one joint management agreement had been signed under Section 36B-E. Councils' use of alternative co-management arrangements which fall outside of these two RMA provisions were limited in number and extent as well, suggesting that co-management with Māori has not advanced as much as the designers of the legislation had anticipated.

This chapter highlights the key findings of the interviews with key informants and the nationwide council survey. The research questions are answered before the significance of the research is discussed. Finally, recommendations for future research directions are made.

10.1.1 Question One: What were the intentions behind the inclusion of the RMA's Section 33 transfers of power and Sections 36B-E joint management agreements?

The interviews with key individuals who were involved in shaping the RMA revealed that the intentions behind the provisions for co-management were genuine in their desire to give Māori a much greater voice in resource management. Informants were unanimously hopeful that councils would embrace relationships with tāngata whenua for better environmental

outcomes for all. The mechanisms for co-management were seen as a way of devolving power to those who are most closely invested in the resource in question, and to encourage the participation of Māori in formal resource management agreements. The provisions were also intended to allow Māori cultural and environmental values to be expressed in the management of resources, and to provide opportunities for Māori to exercise tino rangatiratanga over important resources.

10.1.2 Question Two: To what extent have these provisions been implemented?

As Frieder (1997, p. 5) stated, "Māori were optimistic initially that the Resource Management Act would promote self-determination and that Māori concepts would inform resource policy." Unfortunately, theinitial optimism for the RMA's provisionsmay have faded as it is evident that its promise has not yet been fulfilled by the limited implementation of co-management mechanisms. According to the survey results, there is one official joint management agreement under the RMA provisions, and no use of the Section 33 transfer of power. Just over half of the councils did not have any co-management agreements in place, and the rest that did, had quite constrained agreements with tāngata whenua that fell outside of the RMA framework.

10.1.3 Question Three: What barriers are limiting the uptake of the provisions?

The survey respondents and interview informants made it clear that there were a significant number of barriers which were impeding the uptake of the co-management provisions. The primary reason cited was that councils were fearful of relinquishing power. This was attributed to two main causes, the first being that there was general unfamiliarity and fear surrounding Māori culture, and secondly, that there was no political expediency to share power with Māori. Another barrier was identified as being a lack of governmental support and resourcing to foster co-management arrangements. Due to the lack of co-management agreements in existence, there is limited knowledge about their benefits and challenges, which has two effects. Firstly, there are no practical examples for councils to observe and learn from, and secondly, the state may not want to invest resources and energy into promoting something that has had such limited uptake. The legislation was cited as being insufficiently

clear or well developed, and with a lack of support from central government, councils were unwilling to pursue the use of these sections. Concern was voiced about the capacity of iwi to take on these responsibilities, particularly with the issues of funding and support being uncertain. A further concern was raised about the efficiency of transferring or devolving powers to iwi, when the councils remain ultimately responsible for the resource.

10.1.4 Question Four: How have the provisions been used in practice?

The RMA provisions for co-management have been largely ignored. It is only in the last two years that the first joint management agreement has been established between Taupō District Council and the Tūwharetoa Māori Trust Board to share decision-making over Māori freehold land. There are a number of further joint management agreements currently in development, and it is anticipated that this number will grow as Treaty claims are settled. Section 33 has not been used at all. It appears that of the agreements in place, they are highly limited in the extent and the degree of power shared. Many councils do not even have MoUs with iwi, let alone anything which resembles a co-management agreement. Most councils do not appear to have actively sought out closer relationships with iwi to manage culturally important resources.

10.1.5 Question Five: How does the concept of institutional bricolage explain how their uses have been negotiated by iwi and councils?

Lawmakers have used an institutional bricolage approach to some extent, albeitnot deliberately, in the creation of the two co-management provisions. This is evident from cross-cultural borrowing, the use of existing institutional structures and sanctioned social relationships. Institutional bricolage approaches are also evident in the implementation of the provisions, where councils and iwi have worked around these provisions and developed alternative approaches to meet their own needs to some degree. Councils have entered into partnerships with iwi to manage resources but used different legislation or had some created specifically to cover the agreement. In other cases, iwi have had to embrace non-Māori approaches in order to engage with councils and to participate effectively in resource management. An example of Māori employing a non-Māori structure is Ngāi Tahu's establishment of a specialised resource management unit, Te Ao Marama, to engage on matters of iwi interest with all the councils in the Murihiku rohe. The development of co-management arrangements appears to have been limited by existing norms, practices and relationships, with very few

attempts to break away from the current way of thinking. Whilst councils and iwi have negotiated the use of these provisions to a limited extent, central government has not taken a proactive approach to employ institutional bricolage approaches in developing and adapting the existing mechanisms to a more suitable format.

This research has identified a significant gap between intentions behind the RMA's co-management provisions and their implementation. If the government is genuinely desirous of co-management arrangements with iwi, there needs to be a concerted effort to support and advocate for their use. Local government requires education, resourcing and encouragement to see the co-management of resources with Māori as a viable option. The development of clearer, more flexible legislation to provide for co-management might also be considered, as currently the legislation is considered to be both too restrictive and unclear by councils. The government will need to assess their commitment to genuine partnership with Māori to manage resources collaboratively, and to enable the exercise of kaitiakitanga.

From the results of the survey, it appeared that council staff were, on the whole, unfamiliar with the details of Section 33 transfers of power and Sections 36B-E joint management agreements. Several misidentified their council's efforts with iwi as falling into these categories, when the reality was that they were not the mechanisms stipulated in the RMA. If co-management with Māori is to become more common, council staff needto become familiar with these provisions and gain an understanding of what they entail. This would help reduce fears about their use and make them more appealing as an option to pursue for environmental and cultural gain.

Many councils are still far from establishing strong, close relationships with tāngata whenua, as evident from the number of councils reporting that they do not currently have any formal arrangements with iwi. That said, the survey did not address informal arrangements or ask about the health of the relationships that existed. Likewise, due to research constraints, iwi/hapū were not approached to assess how they viewed their working relationships with councils. However, from the responses to the survey, it appears that most councils have limited formal relationships with tāngata whenua, and those that do, have mostly formalised consultation processes rather than involving tāngata whenua in decision-making for resource management. Genuine partnerships with local government are rare, meaning that Treaty obligations to Māori are not being met in most regions.

Treaty settlements are changing the political landscape and offering tāngata whenua a greater capacity to embrace their role as kaitiaki in a state-sanctioned manner. The Waitangi Tribunal is an advocate of co-management, and there is a growing recognition from councils

that they are going to have to face changing relationships with Māori in the near future. Support for both councils and iwi to negotiate these changes will be required from central government, if the transition to co-management is going to be smooth.

In terms of institutional theory, mechanisms designed to foster collaborative management need to take into account the social constructs and power relationships which influence the formal institutions. Council staff need to work together in their teams, as well as across departments, as do tāngata whenua in reaching consensus amongst iwi and hapū to act in a unified manner. The political willingness to engage with such issues is in constant flux, meaning that progress towards achieving these goals can be slow and often unsatisfactory. There is a patent need for education to develop greater awareness and understanding of processes, relationships and cultural issues. Learning processes are not confined to formalised pathways, but also to experiential processes where learning about what works in different scenarios, which actions are effective or inadequate in different situations, and so on are described through processes of social learning.

Institutional bricolage, as an approach for the development of resource management mechanisms for co-management, suggests that greater flexibility is needed in developing, adapting and changing policy to enable these co-management provisions to work in practice. With nearly two decades having passed since the implementation of the RMA, there has been ample time to review the use of these provisions and to evaluate how they might be improved to enhance their uptake. Iwi and councils show some flexibility in adapting arrangements to be context-specific, but appear to be constrained by the lack of vision at central government level. The government would do well to take a more constructivist approach to adapt co-management mechanisms and support to enable the initial intentions of the RMA co-management provisions to be met.

A significant component of institutional bricolage are the borrowings from cross-cultural sources Cleaver (2002). The RMA has adopted the use of some Māori concepts and values, such as kaitiakitanga, but does not provide much allowance for the expression of Māori social and organisational structures. Māori have to borrow heavily from te Ao Pākehā to operate successfully in resource management legal and procedural practices. Legislation which recognises the bi-cultural nature of Aotearoa, should provide legal provision for Māori to engage with the Crown using their traditional structures and organisations. Cross-cultural borrowing in the RMA does go both ways to a limited extent, but is much more heavily weighted on the government's side. Māori participation in resource management may be more effective and readily achieved if more emphasis was placed on enabling Māori

and council to consciously employ a more bricolagic approach to building relationships and shared resource management practices.

10.2 Limitations of Research

The scope of this research is limited to a fairly small number of informants for the interview phase, and did not include some of the key players involved in the creation of the RMA. As two decades have passed since the RMA was drafted, the informants' recollections may not be entirely accurate or may be tinted by twenty years of retrospection. Nonetheless, this does not change the strength of their kōrero, and the time lag potentially offers the benefit of a better vantage point from which to survey the actions taken in the past. Also, there was strong coherence between the memories of the informants so it can be assumed that the findings are reliable.

The survey of transfers of power and joint management agreements was only able to provide perspectives from the local government point of view, and due to the nature of the survey, is heavily reliant on the respondent for an accurate answer. In some cases it is evident that the respondents do not have a good knowledge of the institutional history, or do not have ready access to the appropriate records. The respondents also colour their council's stance and actions with their own personal attitudes and experiences, so some of the insights derived from the survey may be more representative of an individual rather than of the institution. As the survey was deliberately simple, it was not able to ascertain the degree of power sharing that each alternative co-management arrangement offered. Another limitation was that the research did not include Māori perspectives on the uptake of transfers of power and joint management agreements. The inclusion of Māori perspectives was beyond the scope of the research as itopted to cover all councils for a broad perspective on nationwide progress in co-management, rather than seeking to get in-depth data through the experience of one or two iwi. This gives an overview of the extent of the uptake of co-management provisions across the nation and provides an informed foundation from which to build more detailed case studies from iwi perspectives. There may well be discrepancies between Māori views and those reported by the local authorities, and it is difficult to gain adetailed understanding of how developed collaborative relationships are.

10.3 Future research directions

"The institutional infrastructures inherited from the past can and most often do present major barriers to progress" (Jacobs and Mulvihill, 1995, p. 13). So, how can we ensure that we are able to move beyond their limitations to create more effective resource management institutions to provide for co-management with Māori? To find answers to this question, closer examinations of current co-management agreements with Māori will be required to provide insight into what is effective in both environmental and cultural senses. It may identify strategies of how successful partnerships are formed, and what processes and frameworks best support their development. With the greatest barrier to the use of co-management arrangements with Māori being identified as institutional fear of sharing power, it is essential that future work focuses on how to develop cultural awareness and understanding amongst local government and promoting examples of what works in practice. The lack of genuine council partnerships with Māori suggests that research that might help facilitate strong council-tāngata whenua relationships is required.

This research did not include much in the way of Māori perspectives on collaborative resource management. Further research should be directed towards what Māori might anticipate as potential arrangements that will offer them the greatest chance to engage effectively with councils and communities to exercise tino rangatiratanga unhindered and as guaranteed in te Tiriti o Waitangi. As Prue Kapua stated, the provisions in the RMA were:

> *a tool, or a mechanism, by which they could essentially exercise their own rangatiratanga in terms of their own recognised resource, and make the decisions, as to how it was going to be used...I still think the legislation, and particularly from a Māori perspective, is good. I actually think the provisions are strong, the words are strong in there - how people have administered it is where it is falling down.*
>
> (Kapua, 2009)

To increase and improve theuse of the RMA's co-management provisions a new approach will be required: one which allows a greater degree of flexibility and the capacity for these mechanisms to be developed over time using cultural borrowings from both te Ao Pākehā and te Ao Māori.

Glossary

Ao Māori, te - the Māori world
Ao Pākehā, te - the Pākehā world
Aroha - respect; love
atua - god; ancestor with continuing influence
hapū - sub-tribe(s)
hui - meeting(s)
iwi - tribe(s)
kaitiaki - guardian(s) or trustee(s)
kaitiakitanga - guardianship or trusteeship
kaumātua - elder(s)
kaupapa - purpose, theme, fundamental principles
kaupapa Māori - Māori ideology; incorporating the knowledge, skill, attitudes and values of Māori society
kāwanatanga - government; the right of the Crown to govern and make laws under the Treaty of Waitangi
kōhanga reo - Māori language preschool
kōrero - to talk; speech, narrative, discussion
mahinga kai - the cultural practice of gathering food and other materials; sites of traditional importance for these practices
mana - status, integrity, respect, dignity, power, influence
manaakitanga - obligation as tāngata whenua to build relationships with and look after guests in their rohe
mana whenua - customary authority of and over land
mātaitai - coastal reserve for areas of traditionally important food gathering
mātauranga - knowledge, education, wisdom, understanding
maunga - mountain
mauri - life force or essence
mokopuna - grandchild/grandchildren
Pākehā - New Zealander of European descent
Papatūānuku - Earth Mother
rangatira - leader/chief
reo Māori, te - the Māori language
rohe - area over which an iwi/hapū has authority
rūnanga - tribal council, tribal assembly
Tā - Sir

taiāpure - fishing reserve managed through traditional practices
tāngata whenua - the people of a place
taha Māori - Māori perspective
taonga - tangible and intangible treasure(s)
tapu - sacred; prohibited
tika - truth; correctness
tikanga - correct, right; correct procedure or custom
tino rangatiratanga - unqualified chieftainship, paramount authority
tūpuna - ancestors
wāhi tapu - sacred site(s)
whakaruruhau - mentor
whakapapa - geneaology
whanau - family
whanaunga - relative, blood relation
whanaungatanga - relationship; sense of family connection
whenua - land

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Appendix A

Treaty of Waitangi/Te Tiriti o Waitangi

A.1 Te Tiriti o Waitangi (Māori Version)

The following version of the Treaty is taken from the first schedule to the Treaty of Waitangi Act 1975.[1]

Preamble

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata maori o Nu Tirani-kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei. Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te Tuatahi

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

[1] Retrieved from www.waitangi-tribunal.govt.nz/treaty/maori.asp

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangtiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani. (Signed) WILLIAM HOBSON, Consul and Lieutenant-Governor. Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga o enei kupu, ka tangohia ka wakaaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu. Ka meatia tenei ki Waiangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki. Ko nga Rangatira o te wakaminenga.

A.2 The Treaty of Waitangi (English Version)

The following version of the Treaty is taken from the first schedule to the Treaty of Waitangi Act 1975.[2]

Preamble

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

[2]Retrieved from www.waitangi-tribunal.govt.nz/treaty/english.asp

Article the Third

In consideration there of Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects. W HOBSON Lieutenant Governor. Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified. Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty. [Here follow signatures, dates, etc.]

A.3 Kawharu Translation of the Māori Text of the Treaty

The following translation of the Māori text of the Treaty was done by former Waitangi Tribunal member Professor Sir Hugh Kawharu.[3]

Preamble

Victoria, the Queen of England, in her concern to protect the chiefs and the subtribes of New Zealand and in her desire to preserve their chieftainship and their lands to them and to maintain peace and good order considers it just to appoint an administrator one who will negotiate with the people of New Zealand to the end that their chiefs will agree to the Queen's Government being established over all parts of this land and (adjoining) islands and also because there are many of her subjects already living on this land and others yet to come. So the Queen desires to establish a government so that no evil will come to Māori and European living in a state of lawlessness. So the Queen has appointed 'me, William Hobson a Captain' in the Royal Navy to be Governor for all parts of New Zealand (both those) shortly to be received by the Queen and (those) to be received hereafter and presents to the chiefs of the Confederation chiefs of the subtribes of New Zealand and other chiefs these laws set out here.

The first

The Chiefs of the Confederation and all the Chiefs who have not joined that Confederation give absolutely to the Queen of England forever the complete government over their land.

The second

The Queen of England agrees to protect the chiefs, the subtribes and all the people of New Zealand in the unqualified exercise of their chieftainship over their lands, villages and all their treasures. But on the other hand the Chiefs of the Confederation and all the Chiefs will sell land to the Queen at a price agreed to by the person owning it and by the person buying it (the latter being) appointed by the Queen as her purchase agent.

The third

For this agreed arrangement therefore concerning the Government of the Queen, the Queen of England will protect all the ordinary people of New Zealand and will give them the same rights and duties of citizenship as the people of England. [signed] William Hobson Consul & Lieut Governor So we, the Chiefs of the Confederation of the subtribes of New Zealand meeting here at Waitangi having seen the shape of these words which we accept and agree to record our names and our marks thus. Was done at Waitangi on the sixth of February in the year of our Lord 1840.

[3]Retrieved from www.waitangi-tribunal.govt.nz/treaty/kawharutranslation.asp

Appendix B

Selected Sections of the Resource Management Act

B.1 33 Transfer of powers

1. A local authority may transfer any 1 or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.
2. For the purposes of this section, public authority includes any local authority, iwi authority, board of a foreshore and seabed reserve, government department, statutory authority, and joint committee set up for the purposes of section 80.
3. Repealed
4. A local authority shall not transfer any of its functions, powers, or duties under this section unless—
    (a) it has used the special consultative procedure set out in section 83 of the Local Government Act 2002; and
    (b) before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and
    (c) both authorities agree that the transfer is desirable on all of the following grounds:
        i. the authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty:
        ii. efficiency:
        iii. technical or special capability or expertise.
5. Repealed
6. A transfer of functions, powers, or duties under this section shall be made by agreement between the authorities concerned and on such terms and conditions as are agreed.

7. A public authority to which any function, power, or duty is transferred under this section may accept such transfer, unless expressly forbidden to do so by the terms of any Act by or under which it is constituted; and upon any such transfer, its functions, powers, and duties shall be deemed to be extended in such manner as may be necessary to enable it to undertake, exercise, and perform the function, power, or duty.

8. A local authority which has transferred any function, power, or duty under this section may change or revoke the transfer at any time by notice to the transferee.

9. A public authority to which any function, power, or duty has been transferred under this section, may relinquish the transfer in accordance with the transfer agreement. Management Amendment Act 2003 (2003 No 23).

B.2 Joint Management Agreements

36B Power to make joint management agreement

1. A local authority that wants to make a joint management agreement must—
    (a) notify the Minister that it wants to do so; and
    (b) satisfy itself—
        i. that each public authority, iwi authority, and group that represents hapu for the purposes of this Act that, in each case, is a party to the joint management agreement—
            A. represents the relevant community of interest; and
            B. has the technical or special capability or expertise to perform or exercise the function, power, or duty jointly with the local authority; and
    (c) that a joint management agreement is an efficient method of performing or exercising the function, power, or duty; and
2. include in the joint management agreement details of—
    (a) the resources that will be required for the administration of the agreement; and
    (b) how the administrative costs of the joint management agreement will be met.
3. A local authority that complies with subsection (1) may make a joint management agreement.

36C Local authority may act by itself under joint management agreement

1. This section applies when a joint management agreement requires the parties to it to perform or exercise a specified function, power, or duty together.
2. The local authority may perform or exercise the function, power, or duty by itself if a decision is required before the parties to the joint management agreement can perform or exercise the function, power, or duty and the joint management agreement does not provide a method for making a decision of that kind.

36D Effect of joint management agreement

A decision made under a joint management agreement has legal effect as a decision of the local authority.

36E Termination of joint management agreement

Any party to a joint management agreement may terminate that agreement by giving the other parties 20 working days' notice.

Appendix C

Interview Schedule

Denise Church – 7th October 2009, Wellington (interviewed by Rauru Kirikiri and Nicole McCrossin) Edward Ellison – 15th January, 2010, Otakou (interviewed by Henrik Moller and Nicole McCrossin) Sir Geoffrey Palmer – 11th September 2009, Wellington (interviewed by Rauru Kirikiri and Nicole McCrossin) Guy Salmon – 2nd February 2010, Nelson (interviewed by Henrik Moller and Nicole McCrossin) Ken Tremaine –30th November 2009, Auckland (interviewed by Rauru Kirikiri and Nicole McCrossin) Lindsay Gow –28th April 2010, Pauatahanui (interviewed by Rauru Kirikiri and Nicole McCrossin) Philip Woollaston – 1st February 2010, Nelson (interviewed by Henrik Moller and Nicole McCrossin) Prue Kapua – 5th October 2009, Auckland (interviewed by Rauru Kirikiri and Nicole McCrossin) Shane Jones – 16th September 2009, Wellington (interviewed by Rauru Kirikiri) Terry Lynch – 11th September 2009, Wellington (interviewed by Jonathan Dick and Nicole McCrossin) Tā Tipene O'Regan – 13th October 2009, Christchurch (interviewed by Henrik Moller and Nicole McCrossin)

Appendix D

Survey Questions

1. What is the name of your council?
2. Has the council ever transferred power to iwi/hapū or another local authority through Section 33 of the RMA? (YES/NO)
   (a) If yes, who and what are involved in the transfer of power?
   (b) If no, have iwi/hapū ever approached the council seeking a transfer of power?
3. Does your council have any joint agreements with iwi/hapū under section 36B-E under the RMA Amendment Act 2005? (YES/NO)
   (a) If yes, with which iwi/hapū is the joint agreement, and what comes under the agreement?
   (b) If no, have there been any attempts to enter into a joint agreement?
4. Do local iwi/hapū have any other co-management arrangements to manage natural resources with the council? If yes, could you please give an indication of what these are.
5. If you have any further comments about the uptake of these provisions for Māori under the RMA, please make them below.